

Design-Build Contract

Instructions to Proposers

Washington State Department of Transportation

I-405, SR520 to SR522 Stage 1 (Kirkland Stage 1)

Final Package Review – 15%

January 25, 2005



Project Team

Congestion Relief & Bus Rapid Transit Projects

TABLE OF CONTENTS

	Page
SECTION 1 GENERAL INFORMATION	1
• 1.1 Introduction 1	
• 1.2 Definitions 1	
• 1.3 Scope of Work 1	
1.3.1 Basic Configuration	2
1.3.2 Conceptual Plans and Reference Documents	2
• 1.4 Utility Relocations 2	
• 1.5 Project Goals 2	
• 1.6 Validity Period; Notice to Proceed 3	
• 1.7 Procurement Schedule 3	
• 1.8 Estimated Project Cost 3	
SECTION 2 PROCUREMENT PROCESS	4
• 2.1 Confidentiality during Evaluation and Selection Process 4	
• 2.2 Examination of RFP 4	
• 2.3 Communications 4	
• 2.4 Submission of Proposer Questions 4	
• 2.5 RFP Addenda and Responses to Questions 5	
• 2.6 Geotechnical Information 5	
2.6.1 Preliminary Geotechnical Report.....	5
2.6.2 Supplemental Boring Project.....	6
2.6.3 Additional Geotechnical Investigation and Analysis.....	7
• 2.7 Alternative Technical Concepts 7	
2.7.1 Pre-Proposal Submittal of ATCs	7
2.7.2 Preproposal Review of ATCs	8
• 2.8 Change in Proposer’s Organization 9	

• 2.9	Withdrawal of Proposal	9
• 2.10	WSDOT's Rights	9
• 2.11	Award of Contract	10
• 2.12	Bonds	10
2.12.1	Proposal Bond	10
2.12.2	Contract Bond	11
2.12.3	Surety Qualifications	11
• 2.13	Execution of Contract	11
• 2.14	Failure to Execute Contract	11
• 2.15	Return of Proposal Deposit	12

SECTION 3 PROPOSAL DELIVERY, CONTENT AND FORMAT..... 13

• 3.1	Submittal Requirements	13
3.1.1	Due Date, Time and Location	13
3.1.2	Contents of the Proposal	13
3.1.3	Format	15
3.1.4	Page Limits, Copies and Submission Instructions	15
• 3.2	Disqualification	16
• 3.3	Executive Summary (Section 1)	16
• 3.4	Proposer Information and Certifications (Section 1)	16
• 3.5	Technical Proposal	18
3.5.1	General	18
3.5.2	Quality of Design and Construction (500 Points Maximum)	18
3.5.3	Key Personnel	18
3.5.4	Key Personnel Qualifications	19
3.5.5	Level B Personnel	22
3.5.6	Project Management Approach	24
3.5.7	Organization Narrative and Charts	25
3.5.8	Schedule	25
3.5.9	Quality Management Plan	25
3.5.10	Technical Approach to the Design and Construction of the Project	26
3.5.11	Bridges	27
3.5.12	Retaining Walls and Noise Walls	28
3.5.13	Drainage	28
3.5.14	Roadside Preservation and Restoration	29
3.5.15	Maintenance of Traffic (Maximum 125 Points)	29

3.5.16 Environmental Compliance and Innovation (Maximum 250 Points).	30
3.5.17 Public Information and Community Involvement (Maximum 125 Points)	31
• 3.6 Price Proposal	32
3.6.1 Price	32
3.6.2 Contract Time	32
3.6.2.1 Bidding Contract Time (A+B Bidding)	32
3.6.2.2 The Item Titled "Time"	32
SECTION 4 PROPOSAL EVALUATION PROCESS	33
• 4.1 General	33
• 4.2 Technical Evaluation Scoring Summary Scoring	33
• 4.3 Responsiveness and Pass/Fail Review	35
4.3.1 Initial Responsiveness Evaluation	35
4.3.2 Pass/Fail Criteria Evaluation.....	35
• 4.4 Evaluation of Technical Proposal	35
• 4.5 Evaluation of Price Proposal	36
• 4.6 Best Value Determination	36
4.6.1 Proposal Rating.....	36
SECTION 5 ESCROWED PROPOSAL DOCUMENTS.....	37
• 5.1 Format of EPD	37
• 5.2 Delivery of EPD	37
• 5.3 Return of EPD	37
SECTION 6 CONTRACT AWARD AND EXECUTION	38
• 6.1 Debriefing	38
SECTION 7 PROPOSER STIPENDS.....	39
SECTION 8 PROTESTS	40
• 8.1 Protest Procedures	40
8.1.1 Protests Regarding RFP Documents.....	40

8.1.2 Protests Regarding Responsiveness Determination or Award..... 41

- 8.2 Judicial Review 42

PROPOSAL FORMS

Form A	Design-Build Proposal Form and Signature Page
Form B-1	Price Proposal Form
Form C-1	Identification of Proposer, Guarantors, Major Participants
Form F	Form of Proposal Bond
Form J	(Future Addendum will provide Escrow Agreement)
Form K	Form of Guaranty
Form L	Utility Certification
Form M	Stipend Agreement
WSDOT Form 271-015 – Subcontractor List	

SECTION 1 GENERAL INFORMATION

1.1 Introduction

The Washington State Department of Transportation (“WSDOT”) will use a two-phase process to select a design-build contractor (“Design-Builder”) to deliver the I-405, SR 520 to SR 522 Stage 1 Design Build Project as described in the Contract Documents (the “Project”). During the first phase of the procurement, WSDOT determined the shortlist for the Project based on Statements of Qualifications (“SOQs”) it received in response to WSDOT’s Request for Qualifications dated October 18, 2004 (“RFQ”). This Request For Proposals (“RFP”) is issued as part of the second phase of the procurement.

WSDOT hereby invites those SOQ submitters who have been advised that they are on the shortlist (“Proposers”) to submit competitive sealed proposals (“Proposals”) for design and construction of the Project as more specifically described in this RFP. WSDOT will award the contract for the Project (if at all) to the responsive and responsible Proposer offering a Proposal that meets the standards established by WSDOT and that is determined by WSDOT to provide the best value to WSDOT. The process for determining best value includes a review of the pass-fail requirements, the quality of the Proposer’s Technical Proposal, and Proposer’s Price Proposal. WSDOT will accept Proposals only from shortlisted Proposers.

The RFP Documents consist of these Instructions to Proposers (“ITP”), the Form of Design-Build Contract that will be conformed to include information based on the successful Proposer’s Proposal and signed by WSDOT and the Design-Builder, and certain other documents as identified in Appendix A to this RFP.

1.2 Definitions

Capitalized terms used in these Instructions not otherwise defined herein shall have the meanings set forth in the General Provisions included in the RFP.

1.3 Scope of Work

The Work includes the provision of all services, labor, material and equipment necessary to design and build the Project in accordance with the Contract Documents.

Proposers are advised that the RFP was developed to organize and consolidate the specifications and design and construction criteria for all Project components. However, the technical requirements do not specifically describe every detail of the work required. It is each Proposer’s responsibility to review all pertinent Project requirements and criteria, as contained in the entirety of the RFP, and the selected Design Builder must perform its obligations in accordance with these Contract requirements. The Design-Builder shall not rely on the physical description contained in the Contract Documents to identify ALL Project components. The Design-Builder shall determine the full scope of the Project through thorough examination of the RFP, the Project Site, and any reasonable inferences to be gathered therefrom.

1.3.1 Basic Configuration

The Basic Configuration is defined in Section 1-01.3(1) of Chapter 1, the General Provisions of the RFP. The Proposal must be consistent with the Basic Configuration, subject only to such changes as may have been approved by WSDOT in accordance with the ATC process described herein.

1.3.2 Conceptual Plans and Reference Documents

The Reference Documents contained in the RFP (including those portions of the Conceptual Design that do not establish the Basic Configuration elements) are provided for informational purposes to assist the Proposers in preparing their Proposals, but do not represent requirements binding on the Design-Builder. WSDOT makes no representation or warranty as to the accuracy, adequacy, applicability or completeness of the Reference Documents. Reliance upon the Reference Documents shall be at Proposer's risk, and WSDOT shall have no liability or obligation as a result of the inaccuracy, inadequacy, inapplicability or incompleteness of the Reference Documents, regardless of the contents thereof.

Each Proposer is responsible for reviewing the Conceptual Plans in advance of submitting its Proposal, for purposes of assessing their adequacy for meeting the Contract requirements, and determining whether any changes are necessary or advisable. The Design-Builder shall be solely responsible for Project design and construction in accordance with the Contract Documents.

1.4 Utility Relocations

Section 1-07.17 of the General Provisions and Section 2.10 of the Technical Specifications (together with any documents referenced therein) set forth the rights and obligations of WSDOT, the Design-Builder, and any Utility Owner with respect to Relocation and Relocation Costs. Price Proposals shall be consistent with the requirements of Section 1-07.17 of the General Provisions. WSDOT funds are not available for Relocation Costs arising out of the Relocation of a Utility for which the Utility Owner has Cost Responsibility. Proposers are required to certify that they have not included in their Price Proposal any such Relocation Costs (see Form L). Proposers are reminded that the circumstances under which Design-Builder may obtain additional compensation for Relocation Costs under the Contract are extremely limited.

1.5 Project Goals

The following goals have been established for the Project:

Quality of Design and Construction

- Deliver the Project on time and within budget.
- Meet or exceed technical quality requirements for design and construction, and provide evidence that all quality assurance and quality control requirements have been met.

Environmental Compliance and Innovation

- Meet or exceed environmental requirements during design and construction with no permit violations.

Maintenance of Traffic

- Minimize inconvenience to the public and maximize safety during construction.

Public Information and Community Involvement

- Maintain community support during design and construction.

1.6 Validity Period; Notice to Proceed

Proposals shall remain valid for a minimum of 90 days after the Proposal Due Date. WSDOT anticipates that the Notice to Proceed (NTP) will be issued shortly following execution, but may defer issuance of the NTP for up to 90 days after execution of the Contract.

1.7 Procurement Schedule

Action	Date
Issue Draft RFP	February 15, 2005
Mandatory Draft RFP Meeting	March 1, 2005
Draft RFP One-On-One Meetings	March 1 – May 1, 2005
Issue RFP	May 1, 2005
Voluntary Proposer Meetings	May 1 – May 22, 2005
Request for Supplemental Boring Deadline	May 22, 2005
ATC Submittal Deadline	May 22, 2005
Distribute Supplemental Boring Results	June 15, 2005
Proposer Questions Due	June 22, 2005
Proposal Due Date	July 15, 2005
Announce Apparent Best Value	August 15, 2005
Notice to Proceed	September 15, 2005

1.8 Estimated Project Cost

The WSDOT Engineer's estimated Proposal Price is \$35 million.

SECTION 2 PROCUREMENT PROCESS

2.1 Confidentiality during Evaluation and Selection Process

Subject to applicable law, WSDOT will use reasonable efforts to maintain confidentiality during the Proposal process. The foregoing shall not preclude WSDOT from using, in its sole discretion, ideas contained in the Proposals of any unsuccessful Proposer, subject to WSDOT's payment of the Stipend in accordance with Section 7.

2.2 Examination of RFP

Each Proposer shall be solely responsible for (i) reviewing and examining, with appropriate care, all documents included in the RFP, including any supplements, addenda, and clarification notices issued by WSDOT, (ii) requesting an explanation or interpretation of any discrepancy, deficiency, ambiguity, error, or omission contained therein, or of any provision that Proposer otherwise fails to understand; and (iii) investigating and informing itself of any and all Project conditions and circumstances that may in any way affect the contents of the Proposal or the performance of the Work after Contract award. Proposer bears the risk of all consequences of any failure to thoroughly investigate all relevant Project and Project Site conditions and circumstances as described herein.

2.3 Communications

WSDOT's Representative for receiving Proposer questions, ATC submittals, and all other communications about the Project and the RFP (other than physical submission of the Proposals) is set forth below. Except for communications expressly permitted by the RFP, Proposer shall not discuss the RFP with other WSDOT staff members or WSDOT consultants involved with the Project before Contract award or cancellation of the RFP. Any Proposer engaging in such prohibited communications may be disqualified at the sole discretion of WSDOT.

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Proposals shall be submitted to Ken Walker in accordance with Chapter 3.1.1 of this ITP.

2.4 Submission of Proposer Questions

Any Proposer questions regarding a perceived discrepancy, deficiency, ambiguity, error, or omission contained in the RFP Documents, or of any provision that Proposer otherwise fails to understand regarding the RFP Documents or the Project must be submitted in writing to WSDOT's Representative by the deadline for questions set forth in Section 1.7 of this ITP.

Requests for clarification or interpretation must specifically reference the affected section(s) and page number(s) of the RFP Documents, unless such request is of general application. Telephone and e-mail requests will be accepted provided that the requests are followed up in writing by letter to WSDOT's Project Director at the address specified in Section 2.3 of this ITP. WSDOT will provide responses to questions as described in Section 2.5.

2.5 RFP Addenda and Responses to Questions

WSDOT may from time to time issue Addenda to the RFP. Any Addenda issued by WSDOT will be sent by e-mail to all Proposers and posted on WSDOT's Contract Ad and Award website at <http://www.wsdot.wa.gov/biz/contaa/kirkland/>.

WSDOT will provide written responses via e-mail to all Proposers regarding questions received as described in Section 2.4, and will also post the questions and answers on WSDOT's Contract Ad and Award website at <http://www.wsdot.wa.gov/biz/contaa/kirkland/>. Notwithstanding the foregoing, WSDOT will communicate with each Proposer on a one-on-one basis with regard to questions regarding ATCs that WSDOT determines are appropriate for confidential communications.

A final set of questions and answers will be compiled and distributed prior to the Proposal Due Date. Responses to questions are not Contract Documents and shall not be relevant in interpreting the Contract Documents except as they may clarify provisions otherwise considered ambiguous.

If WSDOT determines, in its sole discretion, that any interpretation or clarification resulting from the question and answer process requires a change in the RFP documents, WSDOT will issue an Addendum making such change. WSDOT will not be bound by, and Proposer shall not rely on, any oral communication or representation regarding the RFP documents, or any written communication except to the extent that it is an Addendum to this RFP and is not superseded by a later Addendum to this RFP, and except to the extent provided above regarding responses to questions.

2.6 Geotechnical Information

2.6.1 Preliminary Geotechnical Report

WSDOT has conducted a preliminary geotechnical investigation, the results of which are set forth in the Project Geotechnical Baseline Report (GBR) included in the RFP as one of the Reference Documents. Each Proposer is solely responsible for reviewing and analyzing the GBR and drawing its own conclusions therefrom. To the extent not consumed by testing, soil samples and rock cores obtained to develop the Project Geotechnical Baseline Report are available for viewing at the FOSSC Materials Laboratory Geotechnical Branch, 1655 South Second Avenue, Tumwater, WA.

The Project Geotechnical Baseline Report shall not be interpreted as being thorough and/or complete and may not be relied upon by the Proposers. The Proposers are responsible for determining whether supplementary geotechnical information may be necessary or appropriate in developing their Proposals.

2.6.2 Supplemental Boring Project

Each Proposer is entitled to obtain certain additional geotechnical information by means of a Supplemental Boring Project that WSDOT will conduct at its own expense. Under the Supplemental Boring Project, Proposers may request WSDOT to perform up to 3 additional test borings, and to provide an analysis of the resultant samples.

A request under the Supplemental Boring Project must be submitted no later than the Request for Supplemental Boring Deadline identified in Section 1.7 of this ITP. Each request shall set forth the location (by station and offset) and highest bottom elevation of the requested boring(s). Each request shall also include specific requests regarding: (i) the frequency and depth of field vane tests; (ii) the locations of split-spoon samples and SPT tests; (iii) the length and diameter of rock cores; (iv) the depth of disturbed samples, undisturbed samples and rock cores sought by the Proposer; and (v) the tests the Proposer desires WSDOT to conduct in relation to the sample gathered.

WSDOT will make reasonable efforts to comply with Proposers' requests under the Supplemental Boring Project, but is not obligated to conduct borings at the precise locations requested. To the extent boring locations requested by one or more Proposers are within twenty (20) feet of each other the locations will be averaged, and only one test boring will be conducted. If a Proposer's boring is averaged with another Proposer's boring, neither Proposer will be allowed an additional boring. Survey personnel provided by WSDOT will establish the boring locations and elevations. A qualified inspector working for WSDOT will inspect the borings. WSDOT staff or an independent, qualified drilling contractor will perform the borings. At the option of the Proposer, the Proposer may dispatch a maximum of one person to observe the drilling, sampling, testing and coring and shall coordinate with WSDOT the transportation of the chosen observer to the drilling site. The Proposer's on-site observers shall not interfere with the operation of the surveyor, driller and inspector.

The WSDOT drill crew or drilling contractor will conduct the following sampling and testing: (i) split-spoon samples and Standard Penetration Tests at 5 foot intervals and every change in stratum; (ii) minimum NQ-size rock cores; (iii) minimum 10 foot rock cores with RQD; (iv) field vane shear tests in soft clays; (v) electronic cone penetrometer testing; (vi) conventional laboratory classification testing on disturbed soil samples; (vii) conventional laboratory tests on rock samples; and (viii) such other tests requested by a Proposer and agreed to by WSDOT in its sole discretion.

WSDOT will perform the test borings in whatever manner or sequence it deems appropriate in its sole discretion. The Supplemental Boring Project report, including the final boring logs and laboratory test results, will be shared with all Proposers according to Section 1.7 of this ITP. Soil and rock samples that are not consumed by testing will be stored for inspection by the Proposers at the FOSSC Material Laboratory in Tumwater, WA. To the extent not consumed by testing, the samples resulting from the Supplemental Boring Project will be turned over to the Design-Builder immediately after the Contract is awarded.

WSDOT makes no representation as to whether said Supplemental Boring Project will be sufficient for the Proposer to prepare its Proposal. Each Proposer must make this determination independently based upon its own independent judgment and experience. Failure by a Proposer to submit a request for test borings under the Supplemental Boring Project constitutes a

conclusive presumption that the Proposer has determined that it does not require any additional geotechnical data to properly design, construct and price the Work, or that it will obtain any necessary geotechnical data through other means.

2.6.3 Additional Geotechnical Investigation and Analysis

If the Design-Builder determines, before or after the award of the Contract, that additional geotechnical or subsurface investigations are necessary to properly design and construct the Work, it is the responsibility of the Design-Builder to perform such investigation and analysis at its sole expense. Such investigations may take place at any time before or after submission of the Proposal. All subsurface investigations, including sampling and laboratory testing, shall be performed in accordance with the 1988 AASHTO Manual on Subsurface Investigations, AASHTO standards, and ASTM standards. No such investigations shall be performed without the prior written consent of WSDOT, which consent may be granted or denied in WSDOT's sole discretion.

2.7 Alternative Technical Concepts

To promote innovation by Proposers and to maintain flexibility in the procurement process, WSDOT will allow Proposers to submit for WSDOT's consideration Alternative Technical Concepts (ATCs) that modify the Basic Configuration. Proposed ATCs must not have an adverse effect on Project quality as determined by WSDOT in its sole discretion. Proposed ATCs most likely to receive favorable consideration are those that maximize efficiency, incorporate technical innovation, increase expected Project life cycles, shorten Project schedule goals, or otherwise improve the quality of the Project or the speed in which the Project is realized thereby benefiting the traveling public. Proposers must demonstrate that the proposed ATC was either used successfully on a similar project under comparable circumstances or otherwise demonstrate the reliability and efficacy of the proposed ATC. WSDOT will not consider any change that would require excessive time or cost for review, evaluation, or investigation, or that does not result in increased benefits or savings to WSDOT.

2.7.1 Pre-Proposal Submittal of ATCs

To be considered, a proposed ATC must be submitted to WSDOT no later than 1:00 p.m. Pacific Standard Time on the date specified in Section 1.7 of this ITP. This deadline applies not only to initial ATC submittals, but also to re-submittal of a proposed ATC that was revised in response to WSDOT's comments regarding a prior submittal.

Each ATC submittal package shall consist of an original and five copies and shall include the following:

- Description. A detailed description and schematic drawings of the configuration of the ATC or other appropriate descriptive information including, if appropriate, product details (i.e. specifications, special provisions), and a traffic operational analysis;
- Usage. A description of where and how the ATC would be used on the Project;

- Deviations. References to requirements of the RFP documents that are inconsistent with the proposed ATC, an explanation of the nature of the deviations from said requirements and a request for approval of such deviations;
- Analysis. An analysis justifying use of the ATC and demonstrating why the requested deviations from the requirements of the RFP Documents should be allowed;
- Impacts. Discussion of potential impacts the implementation of the ATC will have on vehicular traffic, environmental matters identified on relevant environmental documents, surrounding and adjacent communities, safety, and Project life-cycle and infrastructure costs (including impacts on the cost of repair and maintenance);
- Relocations. Discussion regarding the impact of the ATC on Relocations.
- History. A detailed description of other projects where the ATC has been used, the success of such usage, and names and telephone numbers of project owners that can confirm such usage;
- Risks. A description of any added risks to WSDOT and other Persons associated with implementing the ATC;
- Costs. An estimate of the ATC implementation costs to WSDOT, Design Builder and other Persons; and
- Benefit. An estimate of costs, savings, and added value likely to result if the ATC were approved and implemented.

If a Proposer wishes to make any announcement or disclosure to third parties concerning any ATC, it must first notify WSDOT in writing of its intent to take such action, including details as to date and participants, and obtain WSDOT's prior approval to do so.

2.7.2 Preproposal Review of ATCs

Incomplete ATC submittal packages may be returned by WSDOT without review or comment. WSDOT may in its discretion request additional information regarding a proposed ATC, conduct one-on-one meeting(s) to discuss Proposer's ATC(s), and/or establish such protocols or procedures as it deems appropriate for conducting the one-on-one meetings. Subject to the Washington Public Records Act, and to WSDOT's right to use proposed concepts following award of the Contract based on payment of the Stipend, all discussions with Proposers regarding ATCs will remain confidential.

WSDOT will return comments to each Proposer within 10 business days of receipt, provided that WSDOT has received all requested information regarding the ATC. WSDOT's determination will indicate one of the following:

- (a) The ATC is approved; or
- (b) The ATC is not approved; or
- (c) The ATC is not approved in its present form, but may be approved upon satisfaction, in WSDOT's sole judgment, of certain identified conditions that must be met or certain clarifications or modifications that must be made; or

- (d) The submittal does not qualify as an ATC but appears eligible to be included in the Proposal without an ATC (i.e., the concept appears to conform to the Basic Configuration and to be consistent with other Contract requirements); or
- (e) The submittal does not qualify as an ATC and may not be included in the Proposal.

Proposer may incorporate zero, one or more approved ATCs as part of its Proposal. If WSDOT responded to an ATC by stating that certain conditions must be met for approval, the Proposer shall not have the right to incorporate such ATC into the Proposal unless and until the ATC has been timely resubmitted with the conditions satisfied and WSDOT has unconditionally approved the re-submitted ATC. The Proposal Price should reflect any incorporated ATCs. Except for incorporating approved ATCs, the Proposal may not otherwise contain exceptions to or deviations from the requirements of the RFP.

2.8 Change in Proposer's Organization

If a Proposer wishes to change its form of organization from that described in its SOQ, or if it wishes to add or remove any Major Participant or Key Personnel (as such terms are defined in the RFQ) from those identified in the SOQ, the Proposer shall obtain written approval of the change from WSDOT's Engineer as specified in Section 2.3 of this ITP prior to submitting its Proposal. To qualify for the WSDOT Engineer's approval, the written request must document that the proposed change will be equal or better than the Major Participant or Key Personnel identified in the SOQ. WSDOT is under no obligation to approve such requests and may approve or disapprove a portion of the request or the entire request at its sole discretion.

2.9 Withdrawal of Proposal

After submitting a Proposal to WSDOT, the Proposer may withdraw or revise it if:

- (a) The Proposer submits a written request signed by an authorized representative of the Proposer, and
- (b) WSDOT receives the request before the Proposal Due Date.

The original Proposal may be revised and resubmitted as the official Proposal if WSDOT receives the revised Proposal before the Proposal Due Date.

Any attempt by a Proposer to withdraw its Proposal after the time due on the Proposal Due Date will result in a draw by WSDOT upon the Proposal Bond.

2.10 WSDOT's Rights

WSDOT reserves the right, at its sole discretion, to:

- (a) Appoint evaluation committees to review Proposals;
- (b) Investigate the qualifications of any Proposer;
- (c) Seek or obtain data from any source related to the Proposals;
- (d) Require confirmation of information furnished by a Proposer;

- (e) Hold meetings and conduct discussions and correspondence with the Proposers to seek an improved understanding and evaluation of the responses to this RFP;
- (f) Require additional information from a Proposer concerning its Proposal;
- (g) Seek and receive clarifications to a Proposal;
- (h) Require additional evidence of qualifications to perform the Work;
- (i) Modify the RFP process;
- (j) Waive minor deficiencies and irregularities in a Proposal;
- (k) Reject any or all of the Proposals;
- (l) Cancel, modify or withdraw the RFP;
- (m) Issue a new request for proposals;
- (n) Issue a request for Best and Final Offers (“BAFO”);
- (o) Cancel a Contract signed by the selected Design Builder but not yet executed by WSDOT, and
- (p) Not issue NTP after execution of the Contract.

The RFP does not commit WSDOT to enter into a Contract or proceed with the procurement described herein. Other than the right to receive a Stipend as described in Section 7 of this ITP, no unsuccessful Proposer shall be entitled to reimbursement of its costs in connection with the RFP. All of such costs in excess of any Stipend payment owing shall be borne solely by each Proposer and its members. Each Proposer that wishes to be eligible to receive a stipend shall execute and deliver to WSDOT four (4) duplicate original copies of Form M - Stipend Agreement on or before the Proposal Due Date. WSDOT will return two fully executed copies to the Proposer within 14 days after receipt.

2.11 Award of Contract

WSDOT anticipates that Contract award or Proposal rejection will occur within 90 days after the Proposal Due Date. If the apparent best value Proposer and WSDOT agree, this deadline may be extended. If they cannot agree on an extension by said deadline, WSDOT reserves the right to award the Contract to the next apparent best value Proposer or reject all Proposals. WSDOT will notify the successful Proposer of the Contract award in writing.

2.12 Bonds

2.12.1 Proposal Bond

Each Proposer shall submit with its Proposal a Proposal Bond in the amount of 5 percent of the Proposal Price, issued by a surety meeting the requirements stated below. Alternatively, Proposers may submit cash, or a certified check or cashier’s check payable to WSDOT in this amount. Proposal Bonds shall be issued in the form of Form F (Form of Proposal Bond) and shall be signed by the surety. A Proposal Bond shall not be conditioned in any way to modify the minimum 5 percent required.

Proposals that fail to include a Proposal Bond or cash deposit in compliance with this Section 2.12.1 shall be deemed non-responsive, and will be rejected by WSDOT.

2.12.2 Contract Bond

The Proposal shall include a commitment letter from a Surety meeting the requirements stated below, agreeing to issue a Contract Bond in the form of Appendix F included in the RFP for the full amount of the Proposal Price. If multiple Surety letters are provided, the Proposal shall identify which Surety will be the lead Surety. The commitment letter may not include conditions, qualifications or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award of the Contract to Proposer within the time specified in Section 2.11.

The Contract Bond is intended to provide protection to WSDOT for Design-Builder's obligations with respect to the construction and post-construction phases of the Project. As specified in the General Provisions, the Contract Bond may be replaced with a Warranty Bond following Physical Completion. Warranties are described in Section 2.30 of the Technical Specifications.

2.12.3 Surety Qualifications

Bonds must be issued by a Surety with a Best's rating of at least "A" or better and Financial Size Category of VIII or better by A.M. Best Co. The Surety shall: (1) be registered with the Washington State Insurance Commissioner, and (2) appear on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner.

2.13 Execution of Contract

Within 20 calendar days after the award date, the successful Proposer shall return the signed WSDOT-prepared Contract together with the insurance certification, Contract Bond and any other pre-award information required by the Contract Documents.

Until WSDOT executes a Contract, no Proposal shall bind WSDOT. No Work shall begin within the Project limits or within WSDOT-furnished sites until issuance of the Notice To Proceed. The Design-Builder shall bear all risks for any Work begun outside such areas and for any materials ordered before the Contract is executed by WSDOT and the Notice To Proceed has been issued.

If the Proposer experiences circumstances beyond its control that prevents execution of the Contract Documents within 20 calendar days after the award date, WSDOT may in its discretion grant up to a maximum of 20 additional days for return of the executed Contract, provided WSDOT deems the circumstances warrant it.

2.14 Failure to Execute Contract

Failure to return the insurance certification, Contract Bond, or other pre-award information required by the Contract Documents with the signed Contract, or failure or refusal to sign the Contract, shall result in a call upon the Proposal Bond or forfeiture of the deposit in lieu of a Proposal Bond. If this should occur, WSDOT may then award the Contract to the second best value Proposer or reject all remaining Proposals. If the second best value Proposer fails to return the required documents as stated above within the time provided after award, the Contract may

then be awarded successively in a like manner to the remaining best value Proposers until the above requirements are met or the remaining Proposals are rejected.

2.15 Return of Proposal Deposit

When Proposals have been examined and corrected as necessary, Proposal Bonds and deposits accompanying Proposals ineligible for further consideration will be returned. All other Proposal Bonds and deposits will be held until the Contract has been properly executed. When the Contract has been properly executed, all remaining deposits or Proposal Bonds, except those subject to forfeiture, will be returned.

SECTION 3 PROPOSAL DELIVERY, CONTENT AND FORMAT

3.1 Submittal Requirements

3.1.1 Due Date, Time and Location

Sealed Proposals must be submitted at one of the following locations prior to 4:00 P.M. Pacific Standard Time, on the Proposal Due Date:

1. By U.S. mail at: Attn: Ken Walker, Post Office Box 47360, Olympia, Washington 98504 – 7360. WSDOT will consider notification of receipt by the Mail Room as the time of actual receipt of the Proposal.
2. By hand in person or courier in the WSDOT Contract Ad & Award Office, Room 1A23 of the Transportation Building, 310 Maple Park Avenue SE, Olympia WA. 98504 – 7360. Proposals delivered in person will only be accepted in the WSDOT Contract Ad & Award Office Room 1A23.

WSDOT will not accept Proposals by facsimile or electronic transmission. Any Proposal that fails to meet the deadline or delivery requirements will be rejected without opening, consideration or evaluation.

3.1.2 Contents of the Proposal

The Proposal shall contain the sections listed below and shall respond fully to all applicable requirements of the RFP:

	Page Limit
Section 1: Pass/Fail Information:	
<ul style="list-style-type: none"> Executive Summary with Approved ATC's. (Approved ATC's do not count towards the Page Limit) 	10
<ul style="list-style-type: none"> Form A (Design-Build Proposal Form and Signature Page) 	none
<ul style="list-style-type: none"> Form C-1 (Identification of Proposer, Guarantors, Major Participants Earthwork Subcontractors, Structures Subcontractors, and each Subconsultant and Subcontractor performing 20% or more of the Design-Build Work. 	none
<ul style="list-style-type: none"> Form J (Escrow Agreement) 	none
<ul style="list-style-type: none"> Form L (Utility Certification)(3.4(e)) 	none
<ul style="list-style-type: none"> Description of Legal Structure (3.4(f)) 	none
<ul style="list-style-type: none"> Joint and Several Liability Letter – For JVs (3.4(g)) 	none

• Form K (Commitment Letter re: Guaranty - For LLCs (3.4(h)))	none
• Evidence of Authorization – Powers of Attorney (3.4(i))	none
• Information and Work Site Certification (ITP Section 3.4(j))	none
• Certification re: Changes to SOQ Form A (3.4(k))	none
• Certification re: Changes to Key Staff (3.4(l))	none
• Certification re: Right of Way (3.4(m))	none
• Form M (Stipend Agreement)	none
• WSDOT Form 271-015 – Subcontractor List	none
Section 2: Project Management Approach	10
Section 3: VACANT	
Section 4: Schedule	10
Section 5: Quality Management Plan (Appendices do not count towards 100 page limit)	100
Section 6: Environmental Compliance Plan	40
Section 7: Maintenance Of Traffic And Staging Plan	50
Section 8: VACANT	
Section 9: Roadway	None
Section 10: VACANT	
Section 11: Structures	25
Section 12: Drainage	none
Section 13: Pavement Design	5
Section 14: Roadside Restoration and Aesthetic Treatment	20
Section 15: Utilities and Third Parties	5
Section 16: Price Proposal	none

• Form B-1 (Price Proposal)	none
• Form F (Form of Proposal Bond)	none
• Letter(s) from Surety(ies)	none

3.1.3 Format

Except for charts, exhibits and other illustrative and graphical information, all information in the Proposal shall be submitted on 8.5-inch by 11-inch paper. Pages may be printed double-sided and are counted as two pages for the page limitations presented in Section 3.1.2 of this ITP. Covers, divider pages, and appendices are not included in the page limitations. Charts, exhibits and other illustrative and graphical information may be submitted on 11-inch by 17-inch paper, but must be folded to 8.5-inch by 11-inch size, with the title block showing. These 11-inch by 17-inch pages will count as one page. All text, except for the front cover, but including charts and exhibits, must use the Times New Roman font, 12-point type. All dimensional information must be shown in English units.

3.1.4 Page Limits, Copies and Submission Instructions

The page limits for each section of the Proposal are identified in the Table at Section 3.1.2. The Proposal must be packaged in sealed packages clearly displaying Proposer's name, contact person and address on the outside of each Proposal package and labeled as follows:

Proposal for
I-405, SR 520 to SR 522 Stage 1 Design-Build Project
[submittal deadline – date and time]
Proposer Name, Contact Person, and Address

See Section 3.1.1 of this ITP for Proposal Delivery

The Proposal shall include:

1. One original hard copy of Section 16, Price Proposal.

The Price Proposal must be organized as follows:

1. Price Proposal Form B-1
2. Proposal Bond
(Proposal Bond in the form of Form F or alternative security 2.12.1)
3. Surety Letters addressing payment, performance, and warranty bonds.
Letter(s) of commitment from surety(ies) meeting the requirements of ITP Section 2.12.3 to provide the Contract Bond as required in ITP Section 2.12.2.

Proposer shall use tabbed dividers to separate the contents of the Price Proposal.

THE PRICE PROPOSAL SHALL BE IN A SEPARATE, SEALED PACKAGE OR CONTAINER. The outside of the sealed package or container shall clearly display the

Proposer's name, contact person and address on the outside of the Price Proposal and be labeled as follows:

PRICE PROPOSAL

I-405, SR 520 to SR 522 Stage 1 Design-Build Project

[submittal deadline – date and time]

Proposer Name, Contact Person, and Address

See Section 3.1.1 of this ITP for Proposal Delivery

2. One original, one electronic copy, and 24 hard copies of Sections 1-15 as identified in the Table at Section 3.1.2 other than the Price Proposal. The original shall be labeled as such and each copy must be identified in the upper right-hand corner of its front cover as "Copy ____ of 24 Copies – with Appendices."

3.2 Disqualification

Failure to use a sealed package or to properly identify and label any Proposal package may result in an inadvertent opening prior to the appointed time and place, and may result in disqualification of the Proposal. Proposer will be entirely responsible for any consequences, including disqualification of the Proposal, that result from such inadvertent opening if WSDOT determines that Proposer did not follow the instructions in this ITP. It is Proposer's sole responsibility to see that its Proposal is received as required. Proposals received after the time specified on the Proposal Due Date will be rejected without consideration or evaluation. Proposers shall provide responses to all information requested in the RFP. Failure to respond or to provide requested information may result in a determination by WSDOT, in its sole discretion, that a Proposal is non-responsive.

3.3 Executive Summary (Section 1)

The Executive Summary shall be written in a non-technical style, and shall contain sufficient information to familiarize reviewers with Proposer's Project approach and its ability to satisfy the financial, legal and technical requirements of the Project. The Executive Summary shall list all approved ATCs incorporated in the Proposal.

The authorized representative(s) of the Proposer's organization must sign the Executive Summary. If the Proposer is a joint venture, all of the joint venture members must sign the Executive Summary. If the Proposer is not yet a legal entity, the Major Participants must sign the letter and must state their intent to form the entity prior to Award of the Contract. The Executive Summary must certify the truth and correctness of the contents of the Proposal.

3.4 Proposer Information and Certifications (Section 1)

Proposer shall provide the following forms and other information in Section 1 of its Proposal:

- a) Executive Summary with Approved ATC's (Complete Copy of the ATC(s) is to be attached).
- b) Form A (Design-Build Proposal Form and Signature Page). If the Proposer is a joint venture, Form A must be executed by all joint venture members.

- c) Form C-1 (Identification of Proposer, Guarantors, Major Participants, Earthwork Subcontractors, Structures Subcontractors, and each Subconsultant and Subcontractor performing 20% or more of the Design-Build Work.)
- d) Form J (Escrow Agreement)
- e) Form L (Utility Certification)
- f) A detailed description of the legal structure of the entity making the Proposal. If the Proposer is a partnership or joint venture, the Proposer shall attach the full names and addresses of all partners or joint venturers, identify the equity ownership interest of each entity and provide formation and organization information for each general partner or joint venturer. If the Proposer is a limited liability entity, the Proposer shall attach full names and addresses of all equity holders in the limited liability entity and identify any entities that are financially responsible in any way for the limited liability entity.
- g) If the Proposer is a joint venture, the Proposer shall attach a letter signed by an authorized representative of each joint venturer stating that the joint venturer agrees to be held jointly and severally liable for any and all of the duties and obligations of Proposer under the Proposal and, if awarded, under the Contract. The Proposer shall attach evidence to each letter that the person signing the letter has authority to do so.
- h) Form K - If Proposer is a limited liability entity, a commitment letter from each of the equity holders of Proposer, agreeing to provide a guaranty of the Proposer's obligations on Form K.
- i) Evidence of authorization to execute and deliver the Proposal and the Contract. If such authorization arises out of one or more powers of attorney, copies of the power(s) of attorney shall be attached as well as certified copies of the appropriate resolutions from the applicable entities' governing bodies authorizing said power(s) of attorney. If Proposer is a partnership or a joint venture, such evidence shall be provided for the Proposer and for each of its general partners/joint venture members, at all tiers, and in all cases certified by an appropriate officer.
- j) A certified statement that the Proposer has, prior to submitting its Proposal, in accordance with generally accepted engineering and construction practices, reviewed the Reference Documents and other information provided by WSDOT, inspected and examined the Site and surrounding locations, and undertaken other appropriate activities sufficient to familiarize itself with surface conditions and subsurface conditions that are discernible from the surface and affect the Project, to the extent the Proposer deemed necessary or advisable for submittal of a Proposal. The certified statement should specifically indicate that as a result of such review, inspection, examination, and other activities, the Proposer is familiar with and accepts the Site and the physical requirements of the Work.
- k) A signed statement that the information provided by Proposer on Form A of the SOQ has not changed. Alternatively, attach WSDOT approval letter regarding any such changes.
- l) A signed statement that the Key Staff identified on Proposer's SOQ have not changed. Alternatively, attach WSDOT approval letter regarding any such changes to Key Staff.

- m) A signed statement that the Proposer will construct the Work within the Right of Way identified in the RFP. Alternatively, attach WSDOT approval letter regarding any ATC that contemplates construction of the Work outside of the Right of Way identified in the RFP.
- n) Form M (Stipend Agreement)
- o) WSDOT Form 271-015 (Subcontractor List) prepared in compliance with RCW 39.30.060 as amended. The Proposer shall submit with their proposal a list of: (1) Subcontractors who will perform the work of heating, ventilation and air conditioning, plumbing as described in Chapter 18.106 RCW and electrical as described in Chapter 19.28 RCE, and; (2) The work those subcontractors will perform on the contract.; (3) Shall not list more than one subcontractor for each category of work identified, except, when subcontractors vary with bid alternates, in which case the bidder shall identify which subcontractor will be used for which alternate.

3.5 Technical Proposal

3.5.1 General

The Technical Proposal shall include concise narrative descriptions and graphic illustrations, drawings, charts, technical reports and calculations that will enable WSDOT to clearly understand and evaluate both the capabilities of the Proposer and the characteristics and benefits of the proposed Work. No price information of any kind may be included in the Technical Proposal. Copies of any ATC WSDOT Approval letters issued pursuant to ITP Section 2.7 shall be included as attachments to the Proposal. In addition to plans or drawings submitted as a part of the Technical Proposal, the Proposer shall submit design as computer-aided design and drafting (CADD) files in a read-only electronic format in accordance with the requirements of the RFP. The Technical Proposal must be organized to correspond to the items listed in this Section 3.5 and address the evaluation factors set forth in Section 4. Proposer shall use tabbed dividers to separate the contents of the Technical Proposal.

3.5.2 Quality of Design and Construction (500 Points Maximum)

Excellent project management is essential to achieving WSDOT's Project Goals – quality design and construction, environmental compliance and innovation, maintenance of traffic and public information and community involvement. WSDOT needs a Design-Build Team that is sufficiently experienced and properly organized to efficiently deliver a quality product on time and within budget. This requires a dedicated organization with clear lines of communication and authority, well qualified staff, strong management, and comprehensive plans for quality control and quality assurance.

3.5.3 Key Personnel

Complete resumes for Key Personnel shall be provided. Resumes for Key Personnel shall be limited to a maximum of three pages each. Resumes should highlight the following information:

- a) Relevant licensing and registration/certification
- b) Years of experience performing similar work

- c) Actual work examples including projects, duties performed and percent of time on the job
- d) Education and training

Level A Key Personnel

(Level A Key Personnel shall be the same individuals presented in the SOQ unless specifically approved by WSDOT in accordance with Section 2.8 of this ITP.)

- **Design-Builder's Project Manager**
- **Construction Manager**
- **Construction Quality Manager**
- **Design Manager**
- **Environmental Compliance Manager**

Level B Key Personnel

- **Traffic Engineering Manager**
- **Design Quality Manager**
- **Public Information Coordinator**
- **Context Sensitive Solution Manager**

3.5.4 Key Personnel Qualifications

The qualifications and experience of Key Personnel will be reviewed as part of the qualitative assessment of the Proposal. Key Personnel will be evaluated, in part, based on the extent to which they meet and/or exceed such requirements including, but not limited to the following: relevant education, training, certification and experience. The following provides a brief job description, licensure requirements and minimum qualifications that must be met for Key Personnel. The Minimum Qualifications and licensure requirements for these positions will be initially evaluated as either "Pass" or "Fail." A "Fail" Rating in any position can be considered a basis for excluding a Submitter from the short-list. All Key Personnel will be required to be on or immediately adjacent to the Project site or at a facility identified to co-locate the selected Design-Builder's staff with WSDOT personnel and consultants for the duration of the Project activities that involve their areas of responsibility. WSDOT will not require licenses/certifications to be in place as of the Proposal due date provided the Proposal includes a commitment for the licenses/certifications to be obtained prior to award, and provided further that WSDOT determines that the designated individual is qualified to obtain a license/certification. If, in the sole opinion of WSDOT, any of the Key Personnel fail to meet the standards required for performance of the work, WSDOT may disqualify the Proposer.

Design-Builder's Project Manager

Job Description

- The Design-Builder's Project Manager will be responsible for the overall design, construction, quality management and Contract administration for the Project. This person shall be assigned to the Project full time.

Minimum Qualifications

- Must have at least seven years, 10 years preferred, of recent experience managing the design and/or construction of projects on major urban freeways.

Construction Manager

Job Description

- The Construction Manager will be responsible for the overall structure and roadway construction and maintenance for the Project. This person shall be assigned to the Project full time during construction activities. The Design-Builder may elect to have this position be merged with the Design-Builder's Project Manager.
- The Construction Manager must be on site for the duration of construction activities.

Minimum Qualifications

- Must have at least seven years, ten years preferred, of recent experience in highway construction and quality control.

Construction Quality Assurance Manager

Job Description

- It is the responsibility of the Construction Quality Assurance Manager to manage the Design-Builder's workmanship inspections, implement quality planning, oversee the quality assurance testing and inspection and coordinate with WSDOT's verification testing and inspection and independent assurance requirements. The Construction Quality Assurance Manager shall report directly to the person or group with overall project management responsibilities (design, construction, public information, quality, etc.) and not to someone involved exclusively with construction production responsibilities. The Construction Quality Assurance Manager must not be assigned any other duties or responsibilities on the Project. This person will be required to be on site for the duration of the construction activities.
- The Construction Quality Assurance Manager shall have the authority to stop any and all work that does not meet the standards, specifications or criteria established for the Project.

Required Licensure

- Must be a registered professional engineer in the State of Washington prior to the award of the Contract.

Minimum Qualifications

- Must have at least six years, 10 years preferred, of recent experience overseeing the inspection and materials testing on major highway construction projects. Of the six years minimum, the Construction Quality Assurance Manager shall have a minimum of three years experience in construction materials acceptance administration and a minimum of three years experience in construction inspection administration. The experience of an assistant to the Construction Quality Assurance Manager may be used to meet the experience requirement of up to three years of either construction inspection or construction materials administration.

Design Manager

Job Description

- The Design Manager will be responsible for ensuring that the overall Project design is completed and design criteria requirements are met. The Design Manager must be on site whenever design activities are being performed.
- The Design Manager must work under the direct supervision of Design-Builder's Project Manager or the individual responsible for the coordination of design and construction activities.

Required Licensure

- Must be a registered professional engineer in the State of Washington prior to award of the Contract

Minimum Qualifications

- Must have at least ten years of recent experience in managing the design of major urban freeways.

Environmental Compliance Manager

Job Description

- Integrate with the design team to review plans and advise on how to avoid and minimize adverse effects to the natural environment and communities.
- Ensure and provide documentation that design and construction work complies with all environmental commitments agreed to in the environmental documents, permits and approvals of the Project.

- Act as a liaison to WSDOT, regulatory agencies, design team, and construction contractor (i.e., submit reports, discuss changes in the Project, communicate compliance issues, etc.).
- Must have the authority and means to bring the Project into compliance and/or stop work if the Project is in violation of an environmental or cultural regulation or permit.
- Must be on site for the duration of both the design and construction periods of the Project.

Minimum Qualifications

- Must have at least five years, ten years preferred, of experience managing environmental compliance issues on projects. At least three years of this experience must be specific to linear transportation projects including:
 - Reviewing engineering plans to ensure the project's design reflects Environmental Specifications in the contract.
 - Wetland and sensitive environmental area identification; ability to avoid violations or identify that a violation is occurring or has occurred.
 - Preparing and implementing a monitoring plan to ensure erosion/sedimentation and spill control devices (Best Management Practices) are effective and are maintained.
 - Certified through the WSDOT Construction Site and Erosion and Sediment Control Certification Course, or equivalent.

3.5.5 Level B Personnel

Traffic Engineering Manager

Job Description

- The Traffic Engineering Manager will be responsible for ensuring that the design for all traffic elements, including but not limited to signals, lighting, signing and work zone safety and work zone traffic control, is completed and design requirements are met.
- The Traffic Engineer Manager must be on site during design activities and be available during construction activities

Required Licensure

- Must be a registered professional engineer in the State of Washington now or by the time the first notice to proceed is issued.

Minimum Qualifications

- Must have at least five years of recent experience as a traffic engineer
- Experience in signal design, lighting design, sign design, ITS design or work zone safety and work zone traffic control plan design.

Preferred Qualifications

- Experience in signal design, lighting design, signing design ITS design, and work zone safety and work zone traffic control plan design.
- Experience in implementation of ITS during construction.
- Experience in the development of maintenance of traffic plans on similar projects.
- Experience implementing traffic management plans during construction.

Design Quality Manager

Job Description

- The Design Quality Manager shall develop the design portion of the Quality Management Plan.
- The Design Quality Manager shall be responsible for verifying, through audits, that the quality control procedures as required by the Quality Management Plan are correctly and completely followed.
- The Design Quality Manager shall certify that all design prior to submittal to WSDOT or prior to release for early construction has followed all procedures required by the Quality Management Plan, all documentation has been completed and filed in an acceptable manner, and all design packages have been subjected to a quality assurance audit.

Required Licensure

- Must be a registered professional engineer in the State of Washington now or by the time the first notice to proceed is issued.

Minimum and Preferred Qualifications

- Must have at least ten years of recent experience in the design or quality management of major urban freeway projects.

Public Information Coordinator

Job Description

- The Public Information Coordinator shall work closely with WSDOT's current I-405 Program public information program and staff as well as WSDOT's Northwest Region and Sound Transit public information staff.
- The Public Information Coordinator shall build upon the relationships developed in previous phases of the work with project stakeholders including but not limited to:
 - City of Kirkland
 - Resource Agencies
 - Media Outlets
 - Emergency Services and;
 - Groups associated with Context Sensitive Solutions
- The Public Information Coordinator shall schedule, prepare for and facilitate all events associated specifically with the Project pertaining to external communications.
- Must be on site for the duration of the Project.

Minimum and Preferred Qualifications

- Must have at least five years of recent experience with coordinating public information on public projects.

Context Sensitive Solutions (CSS) Manager

Job Description

- The CSS Manager will be responsible for ensuring that the aesthetic elements of the Project, including but not limited to, landscape design and aesthetic treatment to structures and walls conforms to the requirements of the Urban Design Guide and meets or exceeds the expectations of the public.
- The CSS Manager will also be responsible for the appropriate plant selection and management of the plant establishment activities in the wetland mitigation sites.
- Must be on site for the duration of the Project.

Required Licensure

- Must be a registered professional Landscape Architect in the State of Washington now or by the Award of the Contract.

Minimum and Preferred Qualifications

- Must have at least five years of recent relevant experience.

3.5.6 Project Management Approach

The Proposer shall present its Project team's approach to project management. The Proposer shall fully describe how its Project team will be organized to reach the goals presented for the Project. The Proposer shall also provide information substantiating its capability to accomplish the Work and the Project team's approach to program management and procurement management, as well its capability to provide the personnel, facilities, and equipment necessary to complete the Project. The Proposal shall clearly describe the Proposer's approach to:

- Management Strategies/Organization
- Decision making
- Communication within the team
- Coordination with the 128th Direct Access Project
- Integrated Design/Construction/Environmental planning and execution.
- Interaction with WSDOT Staff.
- Interaction with City of Kirkland.
- Interface with municipalities, permitting agencies, stakeholders, and the public.

- Ensuring compliance with Contract requirements.
- Ensuring compliance with federal, State, and local laws and requirements.
- Safety
- Co-Location, including any jobsite field office locations

3.5.7 Organization Narrative and Charts

The Proposer shall include an updated organization chart indicating the basic structure of the Proposer's organization and the roles and responsibilities of each applicable sub-organization. The Proposal shall also include a narrative describing how the Proposer will manage the interrelationships between Project management, design, construction, maintenance, and quality functions, and will also describe a similar management plan for each of its team members, suppliers, and sub-consultants.

3.5.8 Schedule

The Proposal shall include a Preliminary Baseline Contract Schedule, which is not the preliminary 90-day look-ahead schedule. The Preliminary Baseline Contract Schedule shall be based upon the critical path method using Primavera Project Planner (P3EC) and will serve as the basis for developing the detailed Baseline Contract Schedule described in Section 1-08.3 of the General Provisions. The Proposal shall include both hard copies and electronic copies of the Preliminary Baseline Contract Schedule.

The preliminary Baseline Contract Schedule shall show the start and finish date for each major phase of construction as depicted in the Conceptual MOT and Phasing Plans. See Section XXX below. While a schedule that minimizes the total duration of the Project is desirable, a schedule that takes longer but minimizes daily impacts to the road uses and/or is highly coordinated with the 128th Direct Access project may receive a higher over-all technical score.

The Proposal shall also include a preliminary payment schedule. This preliminary payment schedule shall be based on the Preliminary Baseline Contract Schedule described above, shall be presented in the form of a table, and shall indicate, for each month during which work is performed, the percentage of the Proposal Price expected to be received in payment for the work performed. The sum of all payment percentages shall total 100%. ***No dollar amounts shall be presented in the preliminary payment schedule.***

The Proposer shall describe how it will monitor the progress of the Work as compared with the Preliminary Baseline Contract Schedule, and what plans or strategies the Proposer will use to insure that schedule milestones will be met.

In no event shall the Physical Completion Date be shown after December 31, 2007.

3.5.9 Quality Management Plan

The Proposer shall present its approach to Quality Management including a brief description of the Design-Builder's Quality Management Plan (QMP).

Describe how the Design-Builder will ensure the design meets the intent of the contract and the expectations of the owner. The discussion should include a description of how the Design-Builder intends to involve WSDOT including, as appropriate, over-the-shoulder reviews, discipline task forces and 30, 60, 90 submittals.

Describe your approach to the Construction Quality Management Plan. Specifically, describe what strategies will be used to ensure that no material is rejected by WSDOT and no non-conformances reports are generated by WSDOT.

Describe how the Design-Builder will coordinate with the WSDOT team to resolve non-conformance reports and other construction quality issues.

The Proposal shall include a description of the key elements of the proposed Quality Management Plan. The Proposal shall include the following:

- Describe the Design and Construction Quality Managers' responsibility with respect to developing, implementing and maintaining the Quality Management Plan.
- Present a flowchart that depicts the quality assurance process for typical design and construction submittals
- Present a flowchart that depicts the quality assurance process for design and construction of "early construction" items
- Describe the coordination of the design with construction.
- Describe the method of communicating changes or revisions after release for construction of the design either by the designer or in the field.
- Describe how the Proposer plans to deal with instances of nonconformance with the Contract Document, and how it will prevent the unintended use or covering-up of the non-conforming Work.
- Describe how nonconformance with Contract requirements will be tracked, the process by which resolutions to such nonconformance will be developed, and how actions taken to correct nonconformance will be documented and re-inspected.
- Describe the corrective and preventative actions Proposer will take upon the identification of actual or potential major and systemic nonconformity in the Contract Documents, whether identified by Proposer or by WSDOT.

3.5.10 Technical Approach to the Design and Construction of the Project

The Technical Proposal shall present the implemented ATCs and changes to the conceptual plans that reduce:

- Impacts to the environment
- The cost of the project
- The duration of the project

- Impacts to the traveling public

Examples of this may include, but should not be limited to:

- improvements to the drainage design that increases the level of treatment and reduces the life-cycle costs of stormwater management facilities, such as eliminating vaults
- a higher level of replacement for the Forbes Creek Crossing, i.e. stream simulation culvert or bridge
- design and construction of the bridges over 116th that:
 - significantly reduces the schedule
 - impact to the traveling public and/or
 - is highly coordinated with the 128th Direct Access project
- adjustments to clearing limits that reduces wetlands impacts, tree removal or other environment resource impacts

The Proposal shall present other changes to the Conceptual Plans as the Proposer deems necessary to present its approach to the design and construction of the Project.

The Technical Proposal shall include a statement certifying that the Proposer has carefully examined and is fully familiar with the RFP Documents including the Conceptual Plans and has conducted such other field investigations and additional design development which are prudent and reasonable in preparing this Proposal such that the cost and schedule impacts of all changes to the Conceptual Plans, if any, whether necessary or for the convenience of the Design-Builder, have been included in the Proposal or shall be born by the Design-Builder except as provided in the RFP.

At a minimum, the Proposal shall include the following sections:

3.5.11 Bridges

Section 3.5.3.6.2 of the Proposal shall describe the conceptual approach to each bridge. The conceptual approach shall include:

- The proposed bridge type
- The proposed construction phasing of the bridges
 - Address specifically the bridge widths at completion of the Contract.
- The foundation type
- Aesthetic treatments that will be incorporated into the structural elements.
- Any creative or innovative ways in which the design, construction, and/or choice of structure type will benefit and/or enhance the usable life, long-term

maintenance costs, constructability (including maintenance of traffic), and quality of the Project.

- The provisions for future widening of the I-405 Bridges over N.E. 116th Street.
- Elements of each Structure that exceed the Contract requirements as identified in the RFP.
- Describe the bridge deck overlay procedure to be used on the existing I-405 Bridges crossing the BNSF railroad. The description shall include, at a minimum, the proposed overlay material (i.e. modified concrete, polyester concrete, or rapid set latex modified concrete), the proposed method and equipment for existing overlay removal and scarification of the deck, the proposed procedure for inspection and identification of deck areas to be repaired, the proposed deck repair methods, and the proposed finishing machine and methods for finishing the overlay.

3.5.12 Retaining Walls and Noise Walls

Section XXX of the Proposal shall include the conceptual approach to each type of retaining wall and noise wall intended for use on the project. The conceptual approach shall, for each type of retaining and noise wall, describe:

- The foundation type
- The proposed aesthetic treatment of the wall.
- Any creative or innovative ways in which the design, construction, and/or choice of structure type will benefit and/or enhance the usable life, long-term maintenance costs, constructability, and quality of the Project.
- Elements of each Structure that exceed the Contract requirements as identified in the RFP.

3.5.13 Drainage

Section XXXXX of the Proposal shall depict the intended type, size and location of drainage facilities where they vary from those shown in the Conceptual Plans. The Technical Proposal shall include a statement certifying that the drainage design included in the Conceptual Plans, as modified by the Proposal, will meet all contract requirements and the scope and intent of all environmental commitments and permit conditions. All cost and schedule impacts of changes to the drainage design included in the Conceptual Plans, as modified by the Proposal, if any, whether necessary or for the convenience of the Design-Builder, shall be born by the Design-Builder except as provided in the RFP.

3.5.14 Roadside Preservation and Restoration

Preservation of Existing Vegetation

The Design-Builder shall make every effort to minimize the impact to vegetation within the project limits. The proposal shall demonstrate the Design-Builder's strategy for preserving existing vegetation and trees. Specifically address the minimization of impacts between the vicinity of the NE 100th Street pedestrian over-crossing to the vicinity of the NE 116th Street ramps.

Roadside Restoration

The Proposer shall submit a conceptual plan for its roadside restoration approach. This plan shall address the requirements set forth in the Urban Design Criteria, Appendix L of the RFP. The conceptual plan shall consist of typical roadside restoration plans for an area between the vicinity of the NE 100th Street pedestrian over-crossing to the vicinity of the NE 116th Street ramps. The typical roadside restoration plan shall include illustrative plans, sections, elevations, and sketches as required to communicate the Proposal, including:

- Proposed grading and soil improvement strategies.
- A landscape design plan depicting where landscaping and plant material will be used, and the type, size, and density of plant materials.
- A conceptual irrigation plan, describing the areas to be irrigated and the type of irrigation that will be used.

3.5.15 Maintenance of Traffic (Maximum 125 Points)

Public confidence and local agency support depends on well planned and executed maintenance of traffic strategies. Therefore, it is important that the traffic flow be maintained with minimum impact to the traveling public and adjoining property owners during the construction of the Project. Less than optimum maintenance of traffic strategies can contribute to increased congestion and deterioration of the operation of the highway, thereby reducing the ability of the roadway to efficiently and safely move higher volumes of traffic. It is also important that the adjoining local street traffic, such as on NE 116th Street, be maintained. Any proposed disruption to this street or other local streets must be well planned and coordinated with the appropriate agencies. In addition, the traveling public and the surrounding community must be kept well informed.

WSDOT will rank highly Submitters who have demonstrated the ability to maximize the traffic flow and minimize the impact to the public while ensuring the safety of the traveling public as well as the workers.

The Proposal shall include a draft of the Traffic Management Plan as described in Chapter 2.22 of the Technical Specifications with emphasis on the following:

- Traffic phasing & construction staging including:
 - NB and SB I-405 bridges over NE 116th Street
 - NB and SB I-405 bridges over BNSF
 - NB and SB I-405 crossing of Forbes Creek
 - Interface with the I-405 Totem Lake/NE 128th Street HOV Direct Access project
- Establishment of the MOT Task Force

The Proposal shall include Conceptual Construction Staging and Maintenance of Traffic Plans. The conceptual plans shall depict the MOT strategy, including typical cross-section, for each major phase of the construction and a description of the work to be completed in the respective phase.

The Proposal shall specify the number and duration of planned closures including:

- I-405 mainline closures
- All ramp closures
- Local road closures

Each required closure shall include a description of the activities necessitating the closures and proposed detour routes. The number of closures specified in the Proposal will be the maximum number of closures allowed.

3.5.16 Environmental Compliance and Innovation (Maximum 250 Points)

The Project offers unique opportunities to enhance environmental resources and improve conditions in the corridor from those that exist today. The I-405 team has been meeting with the Resource Agencies to develop strategies to ensure the Project meets or exceeds their environmental requirements.

Therefore, WSDOT will rank highly Submitters who have demonstrated a commitment and ability to conduct all affairs in accordance with the dictates of sound environmental protection practices and restoration techniques. WSDOT will also rank highly Submitters who have demonstrated the ability to foster good relationships with federal, state, and local agencies, the tribes, and local stakeholders by ensuring that environmental commitments were reflected in the final design and implemented during construction.

The Proposal shall include an outline of the Design Builder's Environmental Compliance Plan (ECP) as described in Chapter 2.8 of the Technical Specifications with emphasis on the following:

- Strategies the Design-Builder will use to ensure there are no permit violations on the Project.
- Describe the Design-Builder’s communication /coordination approach to interaction with WSDOT and resource agencies regarding environmental permits.

The Design-Builder shall also discuss design concepts and strategies that will be used for minimizing impacts to environmentally sensitive areas and incorporating environmental enhancements into the design and construction of the Project? Discuss these strategies in relation to the two areas listed below:

Minimizing Wetland Impacts

The Design-Builder shall design the Kirkland Stage 1 Project to minimize impacts to wetlands. WSDOT has determined maximum wetland impacts based on an Impact Line rather than on the Cut-Fill Line as identified in the Conceptual Plans (Appendix M1). The Design-Builder has the opportunity to further reduce the amount of permanent wetland impacts.. Describe the Design-Builder’s approach to minimizing wetland impacts identified in the Draft Wetland Mitigation Plan included in Appendix W of the RFP..

Forbes Creek Fish Passage

WDFW and WSDOT have discussed alternatives for providing fish passage at Forbes Creek. These include construction of a bridge, open-cut installation of “stream-simulation” culvert or tunneling a culvert with grade control structures. These alternatives are listed in order of preference by the resource agencies. Describe the Design-Builder’s approach to achieving fish passage at the I-405/Forbes Creek crossing:

- Describe which alternative is selected
- How does this alternative enhance environmental resources
- How is this alternative coordinated with MOT

3.5.17 Public Information and Community Involvement (Maximum 125 Points)

Community involvement and trust have been a major focus on the I-405 Corridor Program since 1998. WSDOT is committed to sharing clear, concise and timely information with the public, elected officials, community leaders, businesses, tribes and the media. The Design-Builder will be responsible for communications related to the construction schedule and impacts.

In addition to committees, public open houses, neighborhood meetings, and a speaker’s bureau, the I-405 Team has developed the Kirkland Advisory Committee (KAC) to review corridor-wide issues such as interchange location/designs, mainline issues, traffic, safety, and Context Sensitive Solutions (CSS). WSDOT has established a memorandum of understanding with the City of Kirkland that commits to continued interaction and review by the KAC and a corridor-wide Aesthetic Committee. The Design-Builder’s team will be required to meet periodically with the KAC to demonstrate that the Design-Build team is following through on these commitments.

Describe the Design-Builder’s approach to a comprehensive Public Involvement Plan and coordination with a Context Sensitive Solutions process.

3.6 Price Proposal

The Price Proposal shall include fully completed Price Proposal Forms B-1.

3.6.1 Price

Proposer shall submit its' Proposal Price broken-down into the categories identified on Form B-1. The total of these items on Form B-1 will be the Contract Price.

3.6.2 Contract Time

3.6.2.1 Bidding Contract Time (A+B Bidding)

This contract contains Price + Time (A+B) Bidding, which (1) provides for determination of the best value Proposal to consider the cost to the public associated with contract time; and (2) provides an incentive/disincentive to the Design-Builder for achieving Substantial Completion based on a duration established by the Design-Builder at the time of submitting the Proposal.

This chapter describes how Time is to be priced. See Section 1-08.11(4) of the General Provisions regarding how time is used as an incentive for achieving substantial completion within the time bid for time by the Design-Builder. See Section 1-08.9(1) of the General Provisions regarding how time is used as a disincentive for achieving substantial completion within the time bid for time by the Design-Builder.

There is no physical work to be accomplished under this item. Time is a bid item, but it is not a pay item. No payment will be made under the bid item Time.

3.6.2.2 The Item Titled "Time"

Pricing Form B includes a blank entitled Time to be filled in by the Proposer for the purpose of establishing the deadline for Substantial Completion of the Project. The number of calendar days entered under Time on Form B will be used in Section 4.2 of the Contract Form to establish the Contract Time. Proposer shall determine the number of days to be included under Time on Form B pursuant to its plan for performance of the Work, taking into account the incentives/disincentives in the form of liquidated delay damages/early completion bonus provided in the Contract.

The number of days to be shown shall start on the first calendar day after Notice to Proceed and shall end on the scheduled date of Substantial Completion. All requirements of the Contract shall be considered in determining the number of days shown on Form B. In making such determination, the Proposer shall adjust the resources and rates of production so that the Work can be accomplished within the minimum and maximum number of calendar days indicated below:

Minimum calendar days for the Item Time: **365**.

Maximum calendar days for the Item Time: **750**.

Proposals with calendar days recorded for Time that are outside the above limits will be considered non-responsive. If the Proposer fails to complete and submit form B or fails to submit a bid for the Time item, WSDOT will consider the bid non-responsive.

SECTION 4 PROPOSAL EVALUATION PROCESS

4.1 General

WSDOT will award the Contract (if at all) to the responsive Proposer that has complied with all of the requirements of the RFP, is technically qualified, and has the best-value Proposal, as determined in accordance with this Section 4. WSDOT will notify the successful Proposer and the unsuccessful Proposers.

4.2 Technical Evaluation Scoring Summary Scoring

The technical evaluation factors are tabulated in the table below. Proposers will be disqualified for receiving a fail for any evaluation factor that is scored pass/fail. The technical evaluation score will be calculated by summing the Proposer's points in the score column in the table below.

Technical Evaluation Score sheet	Max Score	Score
Section 1 Pass-Fail Information		
<u>Executive Summary with Approved ATC's.</u>	P/F	
<u>Form A (Design-Build Proposal Form and Signature Page)</u>	P/F	
<u>Form C-1 (Identification of Proposer, Guarantors, Major Participants, Earthwork Subcontractors, Structures Subcontractors, and each Subconsultant and Subcontractor performing 20% or more of the Design-Build Work.)</u>	P/F	
<u>Form J (Escrow Agreement)</u>	P/F	
<u>Form L (Utility Certification)</u>	P/F	
<u>Form M (Stipend Agreement)</u>	P/F	
<u>WSDOT Form 271-015 (Subcontractor List)</u>	P/F	
<u>Description of Legal Structure (3.4(f))</u>	P/F	
<u>Joint and Several Liability Letter – For JVs (3.4(g))</u>	P/F	
<u>Form K (Commitment Letter re: Guaranty - For LLCs (3.4(h))</u>	P/F	
<u>Evidence of Authorization -- Powers of Attorney (3.4(i))</u>	P/F	
<u>Information and Work Site Certification (ITP Section 3.4(j))</u>	P/F	
<u>Certification re: Changes to SOQ Form A (3.4(k))</u>	P/F	
<u>Certification re: Changes to Key Staff (3.4(l))</u>	P/F	

Certification re: Right of Way (3.4(m))	P/F	
Section 2-15 Technical Proposal		
Section 2 - Project Management Approach	100	
Section 3 - VACANT		
Section 4 - Schedule	75	
Section 5 - Quality Management Plan	125	
Section 6 - Environmental Compliance Plan	100	
Section 7 - Maintenance of Traffic and Staging Plan	175	
Section 8 - VACANT		
Section 9 - Roadway	150	
Section 10 - VACANT		
Section 11 - Structures	75	
Section 12 - Drainage	50	
Section 13 - Pavement Design	50	
Section 14 - Roadside Restoration and Aesthetic Treatment	50	
Section 15 - Utilities and Third Parties	50	
GRAND TOTAL	1000	

4.3 Responsiveness and Pass/Fail Review

4.3.1 Initial Responsiveness Evaluation

WSDOT will conduct an initial review of the Technical Proposals for responsiveness to the requirements set forth in the RFP, including compliance with the pass/fail criteria set forth in ITP Section 4.3.2. Any Proposal not responsive to the RFP may be excluded from further consideration and the Proposer that submitted such Proposal will be so advised. WSDOT may also exclude from consideration any Proposer whose Proposal contains a material misrepresentation.

4.3.2 Pass/Fail Criteria Evaluation

Proposals will be evaluated based on the following pass/fail criteria:

- Business form of Proposers and team members shall meet Project requirements.
- The Major Participants and Key Personnel listed in the Proposal shall not have changed since submission of its SOQ, or Proposer shall have previously advised WSDOT of a change and received WSDOT's written approval for the change.
- Proposal Bond (or alternative security) and surety commitment letter shall have been provided as required by Section 2.12.1.
- Proposer information, certifications and documents as listed in Section 3.4 are included in the Proposal and are complete, accurate and responsive, and they do not identify any material adverse changes from the information provided in the SOQ information.
- Proposer has provided all other forms and documentation required by this ITP.

A Proposal must receive an initial "pass" on all pass/fail criteria listed in the RFP for the Proposal to be further evaluated. WSDOT may, in its sole discretion, request a Proposer to provide clarifications for purposes of determining whether the pass/fail criteria are met. Failure to achieve a "pass" rating on a pass/fail factor may result in the Proposal being declared non-responsive and Proposer being disqualified. Failure to submit information in the manner, format and detail specified may result in the Proposal receiving a "fail" rating and being declared non-responsive. Even though a Proposal receives an initial "pass" allowing technical evaluation to proceed, the Proposal may later be determined to have failed.

A separate pass/fail evaluation will be conducted with regard to the Price Proposal once it is opened, as discussed in Section 4.5

4.4 Evaluation of Technical Proposal

WSDOT will evaluate each of the technical requirements described in Section 3 of this ITP in conjunction with the Project Goals as described in Chapter 1.5 for determining the Proposal technical score. The technical evaluation score sheet in ITP Section 4.2 identifies the maximum scoring for each technical requirement.

4.5 Evaluation of Price Proposal

The Price Proposal will be opened and reviewed after the review of the Technical Proposals. Price Proposal evaluation factors will be pass/fail for:

- Price magnitude (i.e., whether the Proposal Price is within the Department's budget for the project).
- Whether the schedule of payments exceeds the maximums in Section 1-09.9(1).1 of the General Provisions

If the Price Proposal is determined to be responsive and within the Department's budget for the Project, WSDOT will proceed with the best value determination in accordance with Section 4.6. If the Price Proposal fails the above criteria the Proposal may be declared non-responsive. (Note - If a Proposal is deemed unacceptable based solely on price magnitude, it will still be eligible for the Stipend provided all other RFP criteria relative to the Stipend are met.)

4.6 Best Value Determination

4.6.1 Proposal Rating.

Each Proposal will be rated using the following equation:

$$\text{Score} = \frac{T \times \$20,000,000}{\$P + \$\text{Time}}$$

Where:

Score = The Adjusted Proposal Rating

\$P = The Lump Sum Proposal Price from the bid form

\$Time = The Lump Sum price for the item "Time" (Calendar Days x \$10,000.00/Day)

T = Technical Evaluation Score (A number between 0 and 1000)

The Contract will be Awarded to the Design-Builder with the Highest Score from the equation above.

SECTION 5 ESCROWED PROPOSAL DOCUMENTS

5.1 Format of EPD

Proposer shall assemble and deliver documentation (the “EPD”) containing information regarding Proposer's assumptions made in calculating the Price Proposal, including determining the scope of work, and meeting all requirements of the RFP. Proposer shall submit its EPD in hardcopy and whenever possible shall also provide electronic copies. The EPD shall include detailed information from all Subcontractors identified in the Proposal and any other potential Subcontractors who provided data upon which the Proposal is based. In addition to the EPD, Proposer shall include a notarized affidavit signed by an individual authorized by Proposer to execute Proposals. The affidavit shall list each EPD document with sufficient specificity so that a comparison may be made between the list and the EPD to ensure that all of the EPD listed in the affidavit has been enclosed. The affidavit shall attest that the affiant has personally examined the EPD, that the affidavit lists all of the documents used by Proposer to determine the Proposal and that all such EPD has been included.

5.2 Delivery of EPD

Each Proposer must submit its EPD, in a locked cabinet supplied by Proposer to WSDOT at the address set forth in (To Be Addressed In Future Addendum #3) on or before 4:00 p.m., Pacific Time, three business Days after the Proposal Due Date. The key for the locked cabinet will be held only by Proposer. Representatives of WSDOT and Proposer shall review the EPD prior to Contract execution to determine whether they are complete and to compare it to the affidavit. Such representatives shall also organize the EPD, labeling each page so that it is obvious that the page is a part of the EPD and so as to enable a person reviewing the page out of context to determine where it can be found within the EPD, and shall compile an index listing each document included in the EPD. The index shall briefly describe the document and its location within the EPD. WSDOT shall have a right to retain a copy of the index. If, following the initial organization, WSDOT determines that the EPD are incomplete, WSDOT may require Proposer to supply data to make the EPD complete. Incomplete EPD may render the Proposal non-responsive.

5.3 Return of EPD

The EPD submitted by unsuccessful Proposers will be returned to them after the Contract has been executed and delivered, after WSDOT rejects all of the Proposals or after WSDOT terminates its procurement.

SECTION 6 CONTRACT AWARD AND EXECUTION

Following selection of a Proposer by WSDOT and verification that Proposer has complied with the requirements of the RFP, WSDOT will deliver five sets of execution copies of the Contract to the selected Proposer. To be awarded the Contract, the selected Proposer must satisfy WSDOT's contract award requirements by executing and delivering the Contract together with all other required documents described below, within twenty calendar days of receipt of the execution copies of the Contract from WSDOT. WSDOT will return one copy of the Contract executed by WSDOT within ten calendar days of receipt of all required documents from Proposer:

- Executed Contract;
- Evidence of authorization to execute the Contract, in the form of a certified resolution of the governing body of Proposer expressly stating such body's authorization to execute the Contract and, if Proposer is a partnership, joint venture, unincorporated association or limited liability company, of the governing bodies of the entity's partners or members;
- Contract Bond issued by the surety listed in the Proposal, or an equivalent surety meeting the requirements stated in Section 2.12;
- The insurance policies, endorsements and/or certificates required under Section 1-07.18 of the General Provisions.
- Evidence that Proposer, its Major Participants and other identified Subcontractors hold all licenses as of award necessary to perform the Work;
- If applicable, the guaranty(ies) in the form attached hereto as Form K, together with appropriate evidence of authorization thereof;

6.1 Debriefing

Within 60 days after execution and delivery of the Contract, WSDOT will be available for an oral debriefing session upon written request made to WSDOT by an authorized representative of an unsuccessful Proposer.

SECTION 7 PROPOSER STIPENDS

WSDOT will pay a Stipend of \$100,000 to each Proposer that provides a responsive but unsuccessful Proposal, provided that such Proposer has timely executed and delivered the Stipend Agreement (Form M) to WSDOT and has submitted a request for payment to WSDOT. Such request shall be submitted within seven days after notice of award is posted.

If no Contract award is made, all responsive Proposers that have timely executed and delivered the Stipend Agreement will receive the Stipend. The Stipend will be paid within 45 days after award of the Contract or the decision not to award a contract, but not sooner than July 1, 2005.

No Proposer shall be entitled to reimbursement of any of its costs in connection with the RFP except as specified in this Section 7. A Proposer that has submitted a nonresponsive Proposal (including a Technical Proposal that receives less than the minimum required technical score set forth in ITP Section 4.3.1) will earn no Stipend.

In consideration for paying the Stipend, WSDOT reserves the right to use any ideas or information contained in the unsuccessful Proposal in connection with any contract awarded for the Project or with any subsequent procurement, without any obligation to pay any additional compensation to Proposer. Each Proposer acknowledges that WSDOT will have the right to inform the successful Proposer, after award, regarding the contents of all Proposals for which stipends have been (or will be) paid, for the purpose of allowing concepts to be reviewed by the selected Design-Builder and incorporated into the Contract as deemed advisable. Furthermore, upon Proposer's receipt of payment hereunder, the right to use such work product will extend to other projects undertaken by WSDOT, as WSDOT deems appropriate. However, WSDOT acknowledges that the use of any of the work product by WSDOT or the Design-Builder is at the sole risk and discretion of WSDOT and the Design-Builder, and it will in no way be deemed to confer liability on the unsuccessful Proposer.

SECTION 8 PROTESTS

8.1 Protest Procedures

This Section 8 sets forth the exclusive protest remedies available with respect to the RFP. Each Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest contained herein, expressly waives all other rights and remedies and agrees that the decision on any protest, as provided herein, shall be final and conclusive and not subject to legal challenge unless wholly arbitrary. These protest procedures are included in the RFP expressly in consideration for such waiver and agreement by the Proposers. Such waiver and agreement by each Proposer are also consideration to each other Proposer for making the same waiver and agreement.

If a Proposer disregards, disputes or does not follow the exclusive protest remedies set forth in the RFP, it shall indemnify, defend, protect and hold harmless WSDOT, its officers, officials, employees, agents, representatives and consultants from and against all liabilities, expenses, costs (including attorneys' fees and costs), fees and damages incurred or suffered as a result. The submission of a Proposal by a Proposer shall be deemed Proposer's irrevocable and unconditional agreement with such indemnification obligation.

8.1.1 Protests Regarding RFP Documents

Proposer may protest the terms of the RFP prior to the time for submission of Proposals on the grounds that (a) a material provision in the RFP is ambiguous, (b) any aspect of the procurement process described herein is contrary to legal requirements applicable to this procurement, or (c) the RFP in whole or in part exceeds the authority of WSDOT. Protests regarding the RFP shall be filed only after Proposer has submitted a written request for clarification in an effort to remove the grounds for protest.

Protests regarding the RFP shall completely and succinctly state the grounds for protest and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. Evidentiary statements, if any, shall be submitted under penalty of perjury.

Protests regarding the RFP shall be filed as soon as the basis for protest is known to Proposer, but in any event it must be actually received no later than ten calendar days before the Proposal due date, provided that protests regarding an addendum to the RFP shall be filed and actually received no later than five calendar days after the addendum to the RFP is issued (or no later than the Proposal Due Date, if earlier).

Protests regarding the RFP shall be filed in writing by hand delivery or courier to the Protest Official with a copy to WSDOT's Representative and the other Proposers. The "Protest Official" is defined as:

Ken Walker
WSDOT Contract Ad and Award
PO Box 47360
Olympia, WA. 98504-7360

WSDOT will distribute copies of the protest to the other Proposers and may, but need not, request other Proposers to submit statements or arguments regarding the protest and may,

in its sole discretion, discuss the protest with the protesting Proposer. If other Proposers are requested to submit statements or arguments, they may file a statement in support of or in opposition to the protest within seven calendar days of the request.

The protesting Proposer shall have the burden of proving its protest by clear and convincing evidence. No hearing will be held on the protest unless the Protest Official or his designee agrees to a hearing. The Protest Official or his designee will decide the protest on the basis of the written submissions within fifteen calendar days after the Protest Official receives the protest. The Protest Official will furnish copies of the decision in writing to WSDOT's Representative and each Proposer. The decision shall be final and conclusive and not subject to legal challenge unless wholly arbitrary. If necessary to address the issues raised in the protest, WSDOT will make appropriate revisions to the RFP by issuing addenda. WSDOT may in its sole discretion extend the Proposal Due Date.

Notwithstanding the existence of a protest, WSDOT may, in its sole discretion, continue the procurement process or any portion thereof.

The failure of a Proposer to raise a ground for a protest regarding the RFP within the applicable period shall constitute an unconditional waiver of the right to protest the terms of the RFP and shall preclude consideration of that ground in any protest unless such ground was not and could not have been known to Proposer in time to protest prior to the final date for such protests.

8.1.2 Protests Regarding Responsiveness Determination or Award

A Proposer may protest any determination by WSDOT regarding lack of responsiveness or any award made by WSDOT by filing a written notice of protest by hand delivery or courier to the Protest Official with a copy to WSDOT's Project Director. WSDOT will distribute copies of the protest to the other Proposers. The notice of protest shall specifically state the grounds of the protest.

Notice of protest of any non-responsiveness determination must be filed within five days after the notification of non-responsiveness. Notice of protest of any award by WSDOT must be filed within five days after WSDOT's opening of the Price Proposals.

Within seven days of the notice of protest, the protesting Proposer must file with the Protest Official, with a copy to WSDOT's Project Director and the other Proposers, a detailed statement of the grounds, legal authorities and facts, including all documents and evidentiary statements, in support of the protest. Evidentiary statements, if any, shall be submitted under penalty of perjury. The protesting Proposer shall have the burden of proving its protest by clear and convincing evidence.

Failure to file a notice of protest or a detailed statement within the applicable period shall constitute an unconditional waiver of the right to protest the evaluation or qualification process and decisions thereunder, other than any protest based on facts not reasonably ascertainable as of such date.

WSDOT's Representative and the other Proposers may file by hand delivery or courier to the Protest Official, with a copy to the protesting Proposer, a statement in support of or in opposition to the protest. Other Proposers shall also deliver a copy of their statement to

WSDOT's Representative. Such statements must be filed within seven days after the protesting Proposer files its detailed statement of protest.

Unless otherwise required by law, no evidentiary hearing or oral argument shall be provided, except, in the sole discretion of the Protest Official or his designee, a hearing or argument may be permitted if necessary for protection of the public interest or an expressed, legally recognized interest of a Proposer or WSDOT. The Protest Official or his designee will issue a written decision regarding the protest within 15 days after the Protest Official receives the detailed statement of protest. Such decision shall be final and conclusive and not subject to legal challenge unless wholly arbitrary. The Protest Official or his designee will deliver the written decision to WSDOT's Representative and each Proposer.

If the Protest Official or his designee concludes that Proposer filing the protest has established a basis for protest the Protest Official or his designee will determine what remedial steps, if any, are necessary or appropriate to address the issues raised in the protest. Such steps may include, without limitation, withdrawing or revising the decisions, issuing a new request for proposals or taking other appropriate actions.

8.2 Judicial Review

Any decision made by WSDOT regarding the award and execution of the Contract or Proposal rejection shall be conclusive subject to the scope of judicial review permitted under Washington Law. Documents requesting such review, if any, shall be timely filed in the Superior Court of Thurston County, Washington.

Form A

DESIGN-BUILD PROPOSAL FORM AND SIGNATURE PAGE

**Washington State Department of Transportation
Design-Build Request for Proposals
I-5/Everett HOV Design-Build**

PROPOSER: _____

Proposal Date: _____

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
Transportation Building, Room 1A23
310 Maple Park Avenue SE
Olympia, WA 98504-7360

Attention: Mr. Ken Walker

The undersigned (“Proposer”) submits this proposal (the “Proposal”) in accordance with the Instructions to Proposers (the “ITP”) contained in the Request for Proposals (the “RFP”) issued by Washington State Department of Transportation (“WSDOT”), dated _____, for the I-5 Everett HOV Design-Build Project (the “Project”). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the ITP. If the Proposer is a joint venture, or LLC, the agreements, acknowledgments, certifications and representations contained herein shall be deemed made jointly and severally by each joint venture or LLC member.

1. In consideration for WSDOT supplying us, at our request, with the RFP Documents and agreeing to examine and consider this Proposal, the undersigned agrees:
 - a. to keep this Proposal open for acceptance for a minimum of 90 days after the Proposal Due Date without any member or partner withdrawing or any other change being made in the Proposer’s organization, unless WSDOT has agreed in its sole discretion and in writing to such change or withdrawal; and
 - b. if this Proposal is accepted, to provide the Contract Bond securing the due performance of the Design-Build Contract (the “Contract”) as stipulated in the Contract and the RFP.
2. If selected by WSDOT, Proposer agrees to (a) execute the Contract to design and construct the Project in accordance with the Contract Documents and (b) to provide all documents and satisfy all other requirements set forth in Section 6 of the ITP.
3. Enclosed herewith, and by this reference incorporated herein and made a part of this Proposal, are the following:

- Section 1 Executive Summary & Pass/Fail Information
 - Section 2 Project Management Approach
 - Section 3 Vacant
 - Section 4 Schedule
 - Section 5 Quality Management Plan
 - Section 6 Environmental Compliance Plan
 - Section 7 Maintenance of Traffic and Staging Plan
 - Section 8 Vacant
 - Section 9 Roadway
 - Section 10 Vacant
 - Section 11 Structures
 - Section 12 Drainage
 - Section 13 Pavement Design
 - Section 14 Roadside Restoration and Aesthetic Treatment
 - Section 15 Utilities and Third Parties
 - Section 16 Price Proposal
4. Proposer acknowledges receipt, understanding, and full consideration of all RFP Documents, other documents identified on the Project website (www.wsdot.wa.gov) and the following Addenda and set of questions and answers to the RFP:
- [list Addenda, if applicable, and sets of questions and answers]*
5. Proposer certifies that it has carefully examined and is fully familiar with the RFP Documents and is satisfied that such provisions provide sufficient detail regarding the Work and the other obligations of the Design-Builder under the Contract and do not contain internal inconsistencies; that it has carefully checked all the words, figures and statements in its Proposal; that it has conducted such other field investigations and additional design development which are prudent and reasonable in preparing this Proposal, including a thorough review of all of the RFP Documents; and that it has notified WSDOT of any deficiencies in or omissions

from any RFP Documents or other documents provided by WSDOT and of any unusual site conditions observed prior to the date hereof.

6. Proposer agrees that its Statement of Qualifications, as modified by this Proposal, is incorporated into this Proposal as if fully set forth herein. Proposer certifies that each, every, and all of the representations made by Proposer in this Proposal are true and correct.
7. Proposer understands that WSDOT is not bound to accept the lowest priced Proposal or any proposal.
8. Proposer further understands that all costs and expenses incurred by it in preparing this Proposal and participating in the RFP process will be borne solely by the Proposer, except to the extent that the Proposer receives the Stipend as provided for in the RFP.
9. Proposer agrees that WSDOT will not be responsible for any errors, omissions, inaccuracies, or incomplete statements in this Proposal.
10. This Proposal shall be governed by and construed in all respects according to the laws of the State of Washington.

The undersigned affirms that the information provided herein is true and accurate and that any misrepresentations are made under penalty of perjury.

Dated _____, 2005 Proposer _____

[Insert name of the Proposer, identify the type of organization and state or country of organization, and if the Proposer is a joint venture provide signature blocks for each joint venture member.]

[Insert appropriate signature block from following page.]

1. Sample signature block for corporation or limited liability company:

[Insert the Proposer's name]

By: _____

Print Name: _____

Title: _____

2. Sample signature block for partnership or joint venture:

[Insert the Proposer's name]

By: *[Insert general partner's or member's name]*

Print Name: _____

Title: _____

By: _____

Print Name: _____

Title: _____

[Add signatures of additional general partners or members as appropriate. If Proposer is a joint venture, all joint venture members must individually execute this document.]

3. Sample signature block for attorney in fact:

[Insert the Proposer's name]

By: _____

Print Name: _____

Attorney in Fact

Form B-1
PRICE PROPOSAL

Washington State Department of Transportation
Design-Build Request for Proposals
I5/Everett HOV Design-Build

ITEM/			
<u>LINE NO.</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>ITEM TOTAL</u>
1	Proposal Price – Total for Design-Build Work	Lump Sum	_____
2	Credit/Debit Minor Changes		<u>CALC</u>
3	Non-Specification Material Price Adjustment		<u>CALC</u>
4	Non-Specification Material Compaction Price Adjustment		<u>CALC</u>
5	Payment and Incentive Fee		<u>CALC</u>
	Incentive – Quality/Workmanship		
	Incentive – Environmental Compliance		
	Incentive – Public Information/Community Involvement		
	Incentive – Maintenance of Traffic/Work Zone Traffic Control		
	Incentive – Schedule – Early Completion		

TIME

Calendar Days Bid = _____ calendar days x \$10,000/day = Time Bid Amount \$ _____

Form C-1

**IDENTIFICATION OF PROPOSER, GUARANTORS,
MAJOR PARTICIPANTS, EARTHWORK SUBCONTRACTORS, STRUCTURES
SUBCONTRACTORS AND EACH SUBCONSULTANT AND SUBCONTRACTOR
PERFORMING 20% OR MORE OF THE DESIGN-BUILD WORK.**

**Washington State Department of Transportation
Design-Build Request for Proposals
I-5/Everett HOV Design-Build**

NAME OF ENTITY AND CONTACT INFORMATION (address, representative, phone, fax, e- mail)	ROLE IN ORGANIZATION (e.g., Design- Builder, Equity Owner in Proposer, Guarantor, Other Major Participant or Subcontractor	State of Washington Contractor License and License Limit (attach copies)	Description of Work/Services

The undersigned hereby certifies that the above information is true and correct and that the Proposer has not entered into any substantive negotiations with any entity that falls within the definition of “Major Participant” resulting in an agreement to enter into any Subcontracts with respect to the Project, except for those listed above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing declaration is true and correct.

STATE OF _____)
)SS:
COUNTY OF _____)

The undersigned, being first duly sworn, deposes and says that _____ is the _
_____ of _____ and _____ is the _
_____ of _____, which entity(ies) are the
of _____, the Proposer identified in the foregoing Proposal, and that the
answers to the foregoing questions and all other statements therein are true and correct.

Signature: _____

Printed Name: _____

Title: _____

Subscribed and sworn to before me this ____ day of _____, 2005

Notary Public in and for said County and State

[Seal]

My commission expires: _____



Washington State
Department of Transportation

Form F

Proposal Bond

KNOW ALL MEN BY THESE PRESENTS, That we,

of

as principal, and the

a corporation duly organized under the laws of the state of , and authorized to do business in the State of Washington, as surety, are held and firmly bound unto the State of Washington in the full and penal sum of five (5) percent of the total amount of the bid proposal of said principal for the work hereinafter described, for the payment of which, well and truly to be made, we bind our heirs, executors, administrators and assigns, and successors and assigns, firmly by these presents.

The condition of this bond is such, that whereas the principal herein is herewith submitting his or its sealed proposal for the following highway construction, to wit:

said bid and proposal, by reference thereto, being made a part hereof.

NOW, THEREFORE, If the said proposal bid by said principal be accepted, and the contract be awarded to said principal, and if said principal shall duly make and enter into and execute said contract and shall furnish bond as required by the Department of Transportation within a period of twenty (20) days from and after said award, exclusive of the day of such award, then this obligation shall be null and void, otherwise it shall remain and be in full force and effect.

IN TESTIMONY WHEREOF, The principal and surety have caused these presents to be signed and sealed this _____ day of _____, _____.

(Principal)

(Surety)

(Attorney-in-fact)

Form K

FORM OF GUARANTY

**Washington State Department of Transportation
Design-Build Request for Proposals
I-5/Everett HOV Design-Build**

THIS GUARANTY (this “**Guaranty**”) is made as of _____, _____ by _____, a _____ (“**Guarantor**”), in favor of the **WASHINGTON DEPARTMENT OF TRANSPORTATION (“WSDOT”)**.

R E C I T A L S

A. _____ (“**Design-Builder**”), and WSDOT are parties to that certain Design-Build Contract dated _____ (the “**Contract**”) pursuant to which the Design-Builder has agreed to design and construct the Project. Initially capitalized terms used herein without definition will have the meaning given such terms in the Contract.

B. To induce WSDOT to (i) enter into the Contract; and (ii) consummate the transactions contemplated thereby, Guarantor has agreed to enter into this Guaranty.

C. Design-Builder is a _____ [describe relationship with Guarantor]. The execution of the Contract by WSDOT and the consummation of the transactions contemplated thereby will materially benefit Guarantor. Without this Guaranty, WSDOT would not have entered into the Contract with Design-Builder. Therefore, in consideration of WSDOT’s execution of the Contract and consummation of the transactions contemplated thereby, Guarantor has agreed to execute this Guaranty.

NOW, THEREFORE, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

1. Guaranty. Guarantor guarantees to WSDOT and its successors and assigns the full and prompt payment and performance when due of all of the obligations of the Design-Builder arising out of, in connection with, under or related to (a) the Contract as amended or supplemented (and the documents executed or to be executed in connection therewith), and (b) each and every other document and agreement executed by the Design-Builder in connection with the consummation of the transactions contemplated by the Contract (the documents described in clauses (a)-(b) shall collectively be referred to herein as the “**Project Documents**”). The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as the “**Guaranteed Obligations.**”

2. Unconditional Obligations. This Guaranty is a guaranty of payment and performance and not of collection and is an absolute, unconditional, and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred, whether or not recovery may be, or hereafter may become, barred by any statute of limitations or

otherwise, and whether or not enforceable against the Design-Builder. If any payment made by the Design-Builder or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential, or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released, discharged, or otherwise affected by (a) any change in the Project Documents or the obligations thereunder, or any insolvency, bankruptcy, or similar proceeding affecting the Design-Builder, Guarantor, or their respective assets, and (b) the existence of any claim or set-off which the Design-Builder has or Guarantor may have against WSDOT, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit. This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity, or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefore or any other circumstances relating to the Guaranteed Obligations which might otherwise constitute a defense to the Guaranteed Obligations of this Guaranty.

3. Independent Obligations. Guarantor agrees that the Guaranteed Obligations are independent of the obligations of the Design-Builder and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not the Design-Builder is joined therein. WSDOT may maintain successive actions for other defaults of Guarantor. WSDOT's rights hereunder will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been paid and fully performed.

a. Guarantor agrees that WSDOT may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against the Design-Builder. Guarantor hereby waives the right to require WSDOT to proceed against the Design-Builder, to exercise any right or remedy under any of the Project Documents or to pursue any other remedy or to enforce any other right.

b. Guarantor will continue to be subject to this Guaranty notwithstanding: (i) any modification, agreement, or stipulation between the Design-Builder and WSDOT or their respective successors and assigns, with respect to any of the Project Documents or the Guaranteed Obligations; (ii) any waiver of or failure to enforce any of the terms, covenants, or conditions contained in any of the Project Documents or any modification thereof; (iii) any release of the Design-Builder from any liability with respect to any of the Project Documents; or (iv) any release or subordination of any collateral then held by WSDOT as security for the performance by the Design-Builder of the Guaranteed Obligations.

c. The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity, or enforceability of any of the Project Documents or the pursuit by WSDOT of any remedies which WSDOT either now has or may hereafter have with respect thereto under any of the Project Documents.

4. Liability of Guarantor.

a. WSDOT may enforce this Guaranty upon the occurrence of a breach by the Design-Builder of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between WSDOT and the Design-Builder with respect to the existence of such a breach.

b. Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no way limit, affect, modify, or abridge Guarantor's liability for those Guaranteed Obligations that have not been performed.

c. WSDOT, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge, or termination of Guarantor's liability hereunder, from time to time may (i) with respect to the financial obligations of the Design-Builder, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner, or terms of payment of such financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto; (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate, or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations; (v) enforce and apply any security hereafter held by or for the benefit of WSDOT in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that WSDOT may have against any such security, as WSDOT in its discretion may determine; and (vi) exercise any other rights available to it under the Project Documents.

d. This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge, or termination for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power, or remedy (whether arising under the Project Documents, at law, in equity, or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto; (ii) any rescission, waiver, amendment, or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the Project Documents or any agreement or instrument executed pursuant thereto; (iii)

WSDOT's consent to the change, reorganization, or termination of the corporate structure or existence of the Design-Builder; (iv) any defenses, set-offs, or counterclaims that the Design-Builder may allege or assert against WSDOT in respect of the Guaranteed Obligations, including but not limited to failure of consideration, breach of warranty, payment, statute of frauds, accord and satisfaction, and usury; and (v) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of Guarantor as an obligor in respect of the Guaranteed Obligations.

5. Waivers. To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require WSDOT to proceed against the Design-Builder or any other Person or to proceed against or exhaust any security held by WSDOT at any time or to pursue any right or remedy under any of the Project Documents or any other remedy in WSDOT's power before proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of WSDOT, death or disability of, or revocation hereof by Guarantor, the Design-Builder, or any other Person or the failure of WSDOT to file or enforce a claim against the estate (either in administration, bankruptcy, or any other proceeding) of any such Person; (c) any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof; (d) any right or defense arising out of an election of remedies by WSDOT even though the election of remedies, such as non-judicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement against the Design-Builder by the operation of law or otherwise; (e) all notices to Guarantor, to the Design-Builder, or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of the Design-Builder under any of the Project Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto, or notice of any other matters relating thereto; (f) any requirements of diligence or promptness on the part of WSDOT; (g) any defense arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of the Design-Builder or any other Person from any cause other than indefeasible performance in full of the Guaranteed Obligations; (h) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation; (i) any defense based upon any act or omission of WSDOT which directly or indirectly results in or aids the discharge or release of the Design-Builder, Guarantor, or any security given or held by WSDOT in connection with the Guaranteed Obligations; and (j) any and all suretyship defenses under applicable law.

6. Waiver of Subrogation and Rights of Reimbursement; Subordination. Until the Guaranteed Obligations have been indefeasibly paid in full, Guarantor waives any claim, right, or remedy which it may now have or may hereafter acquire against the Design-Builder that arises from the performance of Guarantor hereunder, including, without limitation, any claim, right, or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right, or remedy of WSDOT against the Design-Builder, or any other security or collateral that WSDOT now has or hereafter acquires, whether or not such claim, right, or remedy arises in equity, under contract, by statute, under common law or otherwise. All

existing or future indebtedness of Design-Builder or any shareholders, partners, members, or joint venturers of Design-Builder to Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as the Design-Builder shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by Design-Builder or any shareholders, partners, members, or joint venturers of Design-Builder to Guarantor without the prior written consent of WSDOT. Any payment by Design-Builder or any shareholders, partners, members, or joint venturers of Design-Builder to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for WSDOT.

7. Cumulative Rights. All rights, powers, and remedies of WSDOT hereunder will be in addition to and not in lieu of all other rights, powers, and remedies given to WSDOT, whether at law, in equity or otherwise.

8. Representations and Warranties. Guarantor represents and warrants that:

a. it is a _____ duly [organized][formed], validly existing, and in good standing under the laws of the State of _____;

b. it has all requisite [corporate][partnership][limited liability company] power and WSDOT to execute, deliver and perform this Guaranty;

c. the execution, delivery, and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action on the part of Guarantor;

d. this Guaranty has been duly executed and delivered and constitutes the legal, valid, and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms;

e. neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under (1) [the certificate of incorporation or by-laws][certificate of limited partnership or partnership agreement][certificate of formation or limited liability company agreement] of Guarantor; (2) any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound; or (3) any federal, state, or local law, statute, ordinance, rule, or regulation applicable to Guarantor;

f. it now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Project Documents or referred to therein, the financial status of the Design-Builder and the ability of the Design-Builder to pay and perform the Guaranteed Obligations;

g. it has reviewed and approved copies of the Project Documents and is fully informed of the remedies WSDOT may pursue, with or without notice to the Design-Builder or any other Person, in the event of default of any of the Guaranteed Obligations;

h. it has made and so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied, it will make its own credit analysis of the Design-Builder and will keep itself fully informed as to all aspects of the financial condition of the Design-Builder, the performance of the Guaranteed Obligations of all circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations. Guarantor hereby waives and relinquishes any duty on the part of WSDOT to disclose any matter, fact, or thing relating to the business, operations, or conditions of the Design-Builder now known or hereafter known by WSDOT;

i. no consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any governmental WSDOT or any party to any contract, agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is required for the execution, delivery, or compliance with the terms hereof by Guarantor, except as have been obtained prior to the date hereof; and

j. there is no pending or, to the best of its knowledge, threatened action, suit, proceeding, arbitration, litigation, or investigation of or before any Governmental Person which challenges the validity or enforceability of this Guaranty.

9. Governing Law. The validity, interpretation, and effect of this Guaranty are governed by and will be construed in accordance with the laws of the State of Washington applicable to contracts made and performed in such State and without regard to conflicts of law doctrines except to the extent that certain matters are pre-empted by Federal law or are governed by the law of the jurisdiction of organization of the respective parties.

10. Entire Document. This Guaranty contains the entire agreement of Guarantor with respect to the transactions contemplated hereby, and supersedes all negotiations, representations, warranties, commitments, offers, contracts, and writings prior to the date hereof, written or oral, with respect to the subject matter hereof. No waiver, modification, or amendment of any provision of this Guaranty is effective unless made in writing and duly signed by WSDOT referring specifically to this Guaranty, and then only to the specific purpose, extent, and interest so provided.

11. Severability. If any provision of this Guaranty is determined to be unenforceable for any reason by a court of competent jurisdiction, it will be adjusted rather than voided, to achieve the intent of the parties, and all of the provisions not deemed unenforceable will be deemed valid and enforceable to the greatest extent possible.

12. Notices. Any communication, notice, or demand of any kind whatsoever under this Guaranty shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by telex, telegram, or telecopying (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to WSDOT:

Attn: _____
Telephone: _____
Facsimile: _____

If to Guarantor:

Attn: _____
Telephone: _____
Facsimile: _____

Either Guarantor or WSDOT may from time to time change its address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents.

All notices and other communications required or permitted under this Guaranty which are addressed as provided in this Section 12 are effective upon delivery, if delivered personally or by overnight mail, and, are effective five (5) days following deposit in the United States mail, postage prepaid if delivered by mail.

13. Captions. The captions of the various Sections of this Guaranty have been inserted only for convenience of reference and do not modify, explain, enlarge, or restrict any of the provisions of this Guaranty.

14. Construction of Guaranty. Ambiguities or uncertainties in the wording of this Guaranty will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof.

15. No Waiver. Any forbearance or failure to exercise, and any delay by WSDOT in exercising, any right, power, or remedy hereunder will not impair any such right, power, or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power, or remedy.

16. Bankruptcy; Reinstatement of Guaranty. The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended, or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation, or arrangement of the Design-Builder or by any defense which the Design-Builder may have by reason of the order, decree, or decision of any court or administrative body resulting from any such proceeding. WSDOT is not obligated to file any claim relating to the Guaranteed Obligations if the Design-Builder becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of WSDOT to so file will not affect Guarantor's obligations under this Guaranty.

17. Attorneys' Fees. Guarantor agrees to pay to WSDOT without demand reasonable attorneys' fees and all costs and other expenses (including such fees and costs of litigation, arbitration, and bankruptcy, and including appeals) incurred by WSDOT in enforcing, collecting, or compromising any Guaranteed Obligation or enforcing or collecting this Guaranty against Guarantor or in attempting to do any or all of the foregoing.

18. CONSENT TO JURISDICTION. GUARANTOR AND WSDOT AGREE THAT ANY ACTION OR PROCEEDING TO RESOLVE A DISPUTE BETWEEN GUARANTOR AND WSDOT CONCERNING THE INTERPRETATION, APPLICATION OR ENFORCEMENT OF THE TERMS OF THIS GUARANTY MAY ONLY BE BROUGHT IN THE SUPERIOR COURT OF THURSTON COUNTY, WASHINGTON PURSUANT TO WASHINGTON LAW. GUARANTOR AND THE WSDOT ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURT AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. IF NOT A RESIDENT OF THE STATE OF WASHINGTON GUARANTOR MUST APPOINT AND MAINTAIN AN AGENT FOR SERVICE OF PROCESS IN THE STATE OF WASHINGTON.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

a _____

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

FORM L
UTILITY CERTIFICATION

(To be signed by authorized signatory(ies) of Proposer)

The undersigned certifies by signing and submitting this Proposal, to the best of his or her knowledge and belief, that the Proposal Price does not contain any monies, funds, costs and/or amounts of any kind or nature for the payment of relocation of public or private utilities that are located in WSDOT right of way pursuant to franchise or permit. This certification does not apply in the case of a franchise or permit which contains a specifically designated right of reimbursement to the Utility Owner for utility relocation.

Proposal documents that serve as a basis for the Proposal Price shall be subject to the Audit requirements of Section 1-09.12 of the Contract General Provisions.

A Proposal that does not include this certificate will be considered non-responsive.

The undersigned shall require that the language of this certificate be in all lower tier contracts including but not limited to contracts with Subcontractors, vendors, and suppliers.

I hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Date: _____

Signature: _____

Proposer's Name: _____

Title: _____

Form M

STIPEND AGREEMENT

I-5/Everett HOV Design-Build

Design-Build Request for Proposals

Washington State Department of Transportation Project

THIS STIPEND AGREEMENT (this “Agreement”) is made and entered into as of this _____, 2005, by and between the Washington State Department of Transportation (“Department”), _____, a _____, (“Proposer”), with reference to the following facts:

A. Proposer is one of the entities prequalified to submit Proposals for the I-5/Everett HOV Design-Build Project (the “Project”), and wishes to submit a Proposal in response to the Request for Proposals for the Project (the “RFP”) issued by the Department.

B. The RFP requires each Proposer to execute and deliver a Stipend Agreement to the Department by the date specified in the RFP, as a condition to the Department’s obligation to pay a stipend to the Proposer.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **SERVICES AND PERFORMANCE**

Department hereby retains Proposer to prepare a responsive Proposal in response to the RFP. A “responsive” Proposal means a Proposal submitted by a qualified Proposer, which conforms in all material respects to the requirements of the RFP, as determined by Department, and is timely received by Department.

Subject to the provisions of the RFP Documents regarding ownership of EPDs, all work performed by Proposer and its team members pursuant to this Agreement shall be considered work for hire, and the products of such work shall become the property of Department without restriction or limitation on their use. Neither Proposer nor any of its team members shall copyright any of the material developed under this Agreement.

Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the RFP.

2. **TERM**

Unless otherwise provided herein, the provisions of this Agreement shall remain in full force and effect until execution of the Contract or until one year from the date of the execution of this Agreement, whichever occurs first. Services are authorized to commence effective upon the

execution date of this Agreement and Proposal, and they are due by the dates set forth in the RFP.

3. COMPENSATION AND PAYMENT

- (a) Compensation payable to Proposer for the services described herein shall be in the amount of \$200,000.
- (b) If Department awards the Contract to Proposer, Proposer will not be entitled to compensation hereunder.
- (c) Payment will be owing hereunder only after receipt and approval of goods and services, and will be made within 45 days after award of the Contract or the decision not to award a contract, but not sooner than July 1, 2005, after receipt of a proper invoice submitted to Department under this paragraph 3(c). The invoice must be accompanied by a letter stating that the Proposer agrees with the terms of this agreement. Such invoice may not be submitted until one business day after the earlier to occur of (i) award of the Contract, (ii) cancellation of the procurement, or (iii) expiration of the time period for award stated in the RFP, as the same may have been extended by Department pursuant to the terms of the RFP. Department will advise Proposer when said Contract is executed.
- (d) This Agreement involves the submission of a Proposal by Proposer that must be received by the due date set forth in the RFP and determined responsive by Department as a condition of payment.

4. INDEMNITIES

- (a) Subject to the limitations contained in Section 5.2, Proposer shall indemnify, protect and hold harmless Department and its directors, officers, employees and contractors from, and Proposer shall defend at its own expense, all claims, costs, expenses, liabilities, demands, or suits at law or equity of, by or in favor of or awarded to any third party arising in whole or in part from the negligence or willful misconduct of Proposer or any of its agents, officers, employees, representatives or subcontractors or breach of any of Proposer's obligations under this Agreement.
- (b) This indemnity shall not apply with respect to any claims, demands or suits arising from use of the work product by Proposer or its contractors. Furthermore, if any claim or suit is caused by or results from the concurrent negligence of Proposer or its agents, officers, employees or representatives, this indemnity provision shall be enforceable only to the extent of Proposer's negligence or the negligence of Proposer's agents, officers, employees, representatives or subcontractors.

5. COMPLIANCE WITH LAWS

- (a) Proposer acknowledges that all written correspondence, exhibits, photographs, reports, printed material, tapes, electronic disks, and other graphic and visual aids submitted to Department during this procurement process, excluding only the EPDs, are, upon their receipt by Department, the property of Department and are subject to the Washington Public Records Act.

- (b) Proposer shall comply with all federal, state, and local laws, ordinances, rules, and regulations applicable to the work, and shall not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Agreement.
- (c) Proposer covenants and agrees that it and its employees shall be bound by the standards of conduct provided in applicable laws, ordinances, rules, and regulations as they relate to work performed under this Agreement. Proposer agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.

6. EARLY TERMINATION

This Agreement may be terminated by Department in whole or in part at any time termination is in the interest of Department. No payment will be owing by Department in the event of any such termination, except as provided in paragraph 3(a) above.

7. ASSIGNMENT

Proposer shall not assign this Agreement without Department's prior written consent. Any assignment of this Agreement without such consent shall be null and void.

8. MISCELLANEOUS

- (a) Proposer and Department agree that Proposer, its team members, and their respective employees are not agents of Department as a result of this Agreement.
- (b) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend and include the singular. All words used in any gender shall extend to and include all genders.
- (c) This Agreement, together with the RFP, embodies the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein or in the RFP, and this Agreement shall supersede all previous communications, representation, or agreements, either verbal or written, between the parties hereto.
- (d) It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Washington the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provisions to be invalid.
- (e) This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the day and year first above written.

WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION

By: _____

Name: _____

Title: _____

[insert Proposer's name]

By: _____

Name: _____

Title: _____

WSDOT FORM 271-015
SUBCONTRACTOR LIST

Prepared in compliance with RCW 39.30.060

TO BE SUBMITTED WITH THE BID PROPOSAL

Project Name _____

Failure to list subcontractors who are proposed to perform the work of heating, ventilation and air conditioning, plumbing, as described in chapter 18.106 RCW, and electrical as described in chapter 19.28 RCW will result in your bid being non-responsive and therefore void.

Subcontractor(s) that are proposed to perform the work of heating, ventilation and air conditioning, plumbing, as described in chapter 18.106 RCW, and electrical as described in chapter 19.28 RCW must be listed below. The work to be performed is to be listed below the subcontractor(s) name.

If no subcontractor is listed below, the bidder acknowledges that it does not intend to use any subcontractor to perform those items of work.

Subcontractor Name _____

Work to be performed _____

Subcontractor Name _____

Work to be performed _____

Subcontractor Name _____

Work to be performed _____

Subcontractor Name _____

Work to be performed _____

* Bidder's are notified that is the opinion of the enforcement agency that PVC or metal conduit, junction boxes, etc, are considered electrical equipment and must be installed by a licensed electrical contractor, even if the installation is for future use and no wiring of current is connected during the project.

A licensed electrical contractor must be listed to perform the work.

Sublist revision 6/99DOT
Form 271-015 EF